

Explanatory Memorandum to the Education (School Day and School Year) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by the Education and Public Services Department and is laid before the National Assembly for Wales 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 Education (School Day and School Year) (Wales) (Amendment) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
17 July 2019

PART 1

1. Description

These Regulations allow maintained schools to use one day (two school sessions) in each of the school years 2019/2020, 2020/2021 and 2021/2022 as an INSET day specifically aimed at preparing teaching professionals for the curriculum to be taught at the school as a result of the prospective changes to the curriculum for Wales..

The regulations also specify that the additional Professional Learning INSET days must take place annually, during the third term (i.e. summer term) in each of the school years 2019/2020, 2020/2021 and 2021/2022 .

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 amend the Education (School Day and School Year) (Wales) Regulations 2003¹ (“the 2003 Regulations”) which set out the minimum number of school sessions which must be held in each school year in maintained schools in Wales.

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 will be made under sections 551 and 569(4) and (5) of the Education Act 1996. Those sections were transferred by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The 2003 Regulations set out the minimum number of half-day sessions for which maintained schools must meet within a school year. The minimum number is 380 sessions (190 days). As well as these 190 days, teachers work an additional 5 days when pupils do not attend school (usually referred to as INSET days). These existing 5 INSET days are part of teachers’ pay and conditions and are included within the Working Time section of the statutory School Teachers’ Pay and Conditions Document (STPCD) and are generally used for teacher training.

As outlined in Education in Wales: Our National Mission², the Welsh Government is working to develop transformational curriculum and assessment arrangements

¹ S.I. 2003/3231 (W. 311)

² <https://gov.wales/our-national-mission-0>

in Wales to enable young people to have higher standards of literacy and numeracy, become more digitally and bilingually competent, and evolve to enterprising, creative and critical thinkers. The new arrangements have equity and excellence at their core and help to develop confident, capable and caring citizens.

Welsh Government wants to specifically support teaching professionals to prepare for the proposed changes to the curriculum for Wales which arise from the Independent Review of Curriculum and Assessment Arrangements in Wales³. This also reflects a recommendation from the CYPE Committee report on Professional Learning, December 2017, “that the workforce be prepared for the forthcoming changes to the curriculum”. In addition, this has been an issue raised by the teaching unions, and leaders and practitioners across the system throughout the reform journey thus far.

A focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum. The National Approach to Professional Learning (NAPL) and the associated £24million investment is intended to create time within schools for professionals to develop and up-skill themselves and to work collaboratively within and across schools. The NAPL is a key driver of the objectives within Education in Wales - Our National Mission. Welsh Government is committed to developing a national approach to career-long Professional Learning which is embedded in evidence-based research and effective collaboration.

However, even with the introduction of the NAPL and the provision of this additional funding, there is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new curriculum. Welsh Government therefore intends to give practitioners this extra time in the form of Professional Learning INSET days.

To increase the number of INSET days these regulations amend the 2003 Regulations. This change would allow maintained schools to use one day (i.e. two school sessions) in each of the school years 2019/2020, 2020/2021 and 2021/2022 for the purpose of INSET, specifically aimed at preparing teaching professionals for the curriculum to be taught at the school as a result of the prospective changes to the curriculum for Wales. This would mean that schools would hold six INSET days per year, with the school being closed to pupils on the additional INSET day.

Alongside this, the legislation will also set out that the INSET day will take place during the summer term annually for three years. Holding the INSET days at a similar time, albeit with a degree of flexibility, will help create a national conversation and ensure all teachers are receiving the same messages, and none are left behind.

These Regulations also remove redundant provisions from the 2003 Regulations.

5. Consultation

An eight week public consultation on the policy approach took place between 5 March and 1 May 2019 and 899 responses were received. The consultation was drawn to the attention of a wide audience of key stakeholders including Headteachers, schools, Regional Consortia, Teacher Unions, Local Authorities, and Estyn. The consultation was also publicised on social media.

A summary of consultation responses document has been published on the Welsh Government website and is available here: <https://gov.wales/additional-national-professional-learning-inset-days-2019-2022>

The responses analysis shows a clear agreement, from over 90% of respondents, with our proposal to increase the number of INSET days for professional learning to support the introduction of the new curriculum. The additional INSET day is seen as necessary by practitioners and middle tier organisations because the proposed changes to the curriculum for Wales represents a complex and large-scale reform, and capacity building is needed for practitioners to be able to deliver the curriculum.

We also consulted on the proposal that the additional INSET time should take the form of national days, taking place on a specific date, and also whether mandatory content should be provided by the Welsh Government. As a result of responses we have amended the policy to state that the INSET days should take place in a particular term, the summer term, rather than a single day, reflecting practical feedback and also that a bank of digital, bilingual resources will be available, rather than mandatory training content being required.

Further information on the consultation is set out within the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

In order to achieve the policy objective of supporting practitioners to prepare for the new curriculum by giving them additional time, the following options were identified:

1. Business as usual – this would see INSET days remaining at five and practitioners continuing to prepare during currently available time
2. Taking a legislative approach by creating one additional INSET day per year for three years, to be taken from the 190 days allocated to pupils, for the purpose of professional learning to support the new curriculum

3. Taking a legislative approach by creating one or more additional National Professional learning INSET days per years, to take place on a set date and for more than three years.

As explained above, provision for the existing 5 inset days are part of teachers' pay and conditions and are included within the Working Time section of the statutory School Teachers' Pay and Conditions Document (STPCD). This requires full time teachers to be employed for 195 days per year - of which no more than 190 must be days teaching pupils. The other 5 have traditionally been inset days. Teachers are also required to work "such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties", though these hours are determined by the teacher themselves.

Powers over the STPCD have recently been devolved and a new annual process has been established to consider both teachers' pay and conditions moving forward. This is currently underway with the first STPCD to be designated by Welsh Ministers due to come into force from 1 September 2019. This focusses on pay rather than conditions, such as INSET and so was not considered to be a vehicle to create additional INSET time. In addition these changes are specifically related to achieving our policy objectives of preparing for the new curriculum. They reflect a separate and specific policy response to the need to prepare, rather than consideration of wider terms and conditions. We also want to maintain clarity around this change and any other changes brought in under the auspices of the Independent Welsh Pay Review Body (IWPRB)

7. Costs and benefits

Option 1 – Business as usual - this would see INSET days remaining at five and practitioners continuing to prepare during currently available time

Costs

This is the baseline option and as such there are no additional financial costs associated with this option. Schools will remain open to pupils, and practitioners will need to identify alternative methods of working together as a whole school and collaboratively with partners.

However this option carries a high degree of risk, and opportunity cost, as if the additional time, which practitioners and Headteachers have been vocal that they need, is not given then we risk schools being unprepared for the implementation of the new curriculum from 2022. This would impact upon both the delivery of the new curriculum and consequently on the outcomes for children and young people who will not benefit fully from the new curriculum.

Benefits

The benefits of this approach would be that there would be no additional cost to parents as schools would retain their current five INSET days and that children

and young people would not lose a day's teaching. However, these benefits are very short term, and we believe the increase in the risk to the roll out of the curriculum offsets these benefits.

Option 2 - Taking a legislative approach by creating one additional INSET days per year for three years, to be taken from the 190 days of school time allocated to pupils

Costs

This option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as it would take place on a day when schools would have been open to pupils.

We believe the main impact will be upon children and families, particularly those on lower incomes. Our decision to limit the additional INSET days to one is partly as a result of conducting the equality impact assessment, as in this way we can mitigate some of the impact. The impact on children as a group will be short term as there will be a collective missed day of school for children and young people, however in the long term this will enable the successful delivery of new curriculum, improving the standard and breadth of education they receive.

There will be a cost, although difficult to quantify, both in terms of time and money for working families, where either childcare or annual leave is used to cover the time for an additional INSET day. While some may be able to draw upon family member support for childcare we know that other parents will need to pay for this additional childcare. This will be for one additional day for three years, until 2022.

We are unable to estimate the cost of an additional INSET day to parents who need to use childcare for the day that the schools are closed. This is because we do not have reliable evidence on the number of parents who would seek paid for childcare in this instance, nor how much this is likely to cost.

Data on the cost of both registered and unregistered childcare, during both term time and holiday periods, is limited. The Welsh Government Review of the Childcare Sector in Wales (2018) gives a description of some of these limitations with different data sources (<https://gov.wales/sites/default/files/statistics-and-research/2018-12/180110-review-childcare-sector-en.pdf>). Furthermore, the information we do have on costs shows vast variation.

Section 11 of the Childcare Act 2006 places a duty on local authorities to undertake a Childcare Sufficiency Assessment (CSA). Providers are not obliged to share their rates with local authorities, but the CSAs show significant variation in costs between those that have done so. An assessment of local authority responses on costs of holiday provision shows that childcare prices in Wales vary from 65% to 139% of the national average (P.21 https://www.familyandchildcaretrust.org/sites/default/files/Holiday%20Childcare%20Survey%202018_Family%20and%20Childcare%20Trust.pdf).

This picture is further complicated given that evidence shows demand for paid for childcare varies significantly geographically, by child age, and parent employment status (see for instance, Welsh Government National Survey data which evidences variations). Furthermore, ad hoc formal childcare can be difficult to find and access. Inset days, by definition, are in term time and while they might precede or follow school holidays it is likely holiday clubs may not be open. As well as using holiday clubs, parents may also use activity clubs as de facto childcare, which further distorts data on formal childcare demand.

The impact on lower income families with both parents/carers working is harder to mitigate, but there are some actions which we can take to try to reduce the impact. Schools will be advised to consider carefully the timing of the day to minimise disruption to parents, for example adding on to a half term so annual leave can be usefully used.

In terms of the impact upon children, the proposal is intended to affect the lives of children positively; ensuring their teachers and those leading their schools are ready and confident to deliver the new curriculum. By providing dedicated INSET time which teachers and schools can use to prepare, children should have a better experience when the new curriculum comes on board in 2022. The future use and approach to INSET will also be considered during the evaluation of the policy, and so children in the long term should benefit from their teachers access to well planned and tailored professional learning.

In the short term if the proposal goes ahead children will miss three days schooling over three years. This may have a small negative impact on some children as they are missing out on a day of teaching, however as it will be a collective missed day there will not be the usual element of 'catching up' which follows an absence. It might appear that this would affect all children the same on the surface, as all will be unable to attend school for those sessions. However, children who are living in poverty or who are experiencing adverse childhood experiences at home may feel a bigger impact, for example missing out on the structure of the school day or on free school meals.

The drive to improve attendance over the past few years means that the impact on children of missing a days schooling at the general population level will not be as severe as it would have been had attendance levels been lower. Going above one day per year might mean this mitigation in terms of learning time does not hold. Statistics show the percentage of half day sessions missed were 6.7% and 9.0% for Primary and secondary in 2006/7, and that these had improved to 5.5% and 6.2% by 2017/18 (Available here – <https://statswales.gov.wales/v/F6w4>)

There will also be an administrative cost, to be borne by the Welsh Government, relating to the development of the bank of digital, bilingual resources. Any costs associated with developing specific materials for the INSET days would therefore be met from within the existing Welsh Government budgets.

As highlighted by the consultation responses there is a broad continuum of needs in schools, from those at the start of exploring curriculum reform to those schools

involved in the curriculum design process. The INSET resources we will develop need to accommodate this diversity and we therefore envisage a range of resources being developed. They are likely to be a combination of online tools, Interactive online content, and slide packs or short videos developed in conjunction with Regional Consortia and schools

There may be a level of savings to be made for the education system as support staff are not required (or usually paid) to attend INSET sessions in the same way as teachers. If schools do not extend these extra INSET days to Support Staff it effectively allows LAs to reduce the number of days their support staff are employed for, and thereby their costs. However we would, in line with the principles of the NAPL being for all staff in schools, encourage the inclusion of support staff in these additional INSET days. There may also be reductions in home to school travel costs, but only if the INSET day is known about and planned for by LAs.

The Minister will also be recommending to schools that 1 out of the 5 INSET days already allocated to schools under the school teacher statutory pay and conditions document also be used to prepare for the new curriculum, to be taken at a time to suit the school.

As set out in section 4, this would be in addition to the additional Professional Learning day provided for by the regulations. This approach reflects the feedback in the responses, that 78% of respondents felt that one additional day would not be sufficient. Welsh Government agree that more time will be needed but that this could come out of one of the pre-existing INSET days, reflecting the fact that those who felt that their schools used the INSET days wisely are already using them to work on their implementation of the new curriculum, and to minimise the cost on families and missed school days of pupils.

Benefits

Welsh Government wants to specifically support teaching professionals to prepare for the delivery of the new curriculum. Welsh Government believes a focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum. The National Approach to Professional Learning (NAPL) and the associated £24million investment is intended to create time within schools for professionals to develop and up-skill themselves and to work collaboratively within and across schools.

The NAPL is a key driver of the objectives within Education in Wales - Our National Mission. Welsh Government is committed to developing a national approach to career-long Professional Learning which is embedded in evidence-based research and effective collaboration.

The Welsh Government believes that in conjunction with the NAPL, one extra day per year, for the above three years, to specifically focus on professional learning to support the introduction of the new curriculum will provide the balance of extra support and time, with the amount of time pupils have in school. However, even with the introduction of the NAPL and the provision of this

additional funding, there is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new curriculum.

These three years represent the key period for engagement and preparation prior to delivery of the new curriculum being realised in schools with the publication of the draft curriculum in 2019, the final curriculum in 2020 with roll out statutory from 2022.

Option 3 - Taking a legislative approach by creating one or more additional National Professional learning INSET days per year, to take place on a set date and for more than three years.

Costs

Similarly to option 2, this option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as it would take place on a day when schools would have been open to pupils.

Many of the same considerations as those set out above apply to this option, but to a greater extent. For example, while it would give practitioners more time, and was therefore seen as beneficial within the consultation, the cost to parents would multiply should more than one day be made available. This was shown within the impact assessments and in the light of this, and also the potential impact of a greater level of collective missed schooling, it was felt that this option could not be justified.

However, as set out above, the Minister will be suggesting to schools that they use, as a minimum, one of their existing five days for the purpose of preparing for the new curriculum, if they are not already.

Benefits

Similarly to above, this would support teaching professionals to prepare for the delivery of the new curriculum. This focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum.

Outcome

Having weighed the costs and benefits, and considered carefully the responses to the consultation, the option chosen was option 2; to use subordinate legislation to provide one additional INSET day per year for three years.

8. Consultation

We consulted from 5 March – 1 May on proposals for an additional National Professional Learning INSET day. We received 899 responses, these included responses from organisations in the middle tier such as the regional consortia,

Local Authorities, Estyn, EWC and the NAEL, as well as from Unions, teachers and parents.

The consultation proposed an additional INSET day for the next three academic years (2019/20, 2020/21 and 2021/22) as schools engage with the new curriculum prior to its formal roll out in schools (academic year 2022/23). The consultation asked seven policy questions (and two mandatory questions regarding the Welsh language) and included a space for further comments.

The consultation posed questions around the optimum number of additional INSET days, how long they should be available for, whether content should be provided and whether we should set a specific day on which the Inset should be held.

The consultation responses document contains a detailed analysis of the responses received and can be found on the Welsh Government website <https://gov.wales/additional-national-professional-learning-inset-days-2019-2022>

Summary of key themes

The general trend amongst responses was agreement that an additional INSET day is necessary, and preferably more than one in many cases. Alongside this, a variety of alternative delivery models were suggested including more than one additional INSET day each year, offering these days for at least three years (if not more to allow for implementation and evaluation), and various options in terms of suitable timing for the additional INSET days.

There was a tendency for respondents to emphasise that additional INSET days should be considered as part of a wider Professional Learning journey. Responding to new curriculum and assessment arrangements – as well as wider education reforms – was clearly identified as a task beyond the scope of one additional INSET day. Practitioners will need a comprehensive programme of Professional Learning and planning opportunities, which will necessitate changes to existing INSET days, PPA time, cluster working and regional support.

Respondents often expressed awareness of the scale of work required to adapt to a complex new curriculum and the capacity of practitioners to undertake such work. Respondents emphasised that practitioners' workloads are already heavy and curriculum reform (and other education reforms) represented an added burden. As such, respondents emphasised this fact should be at the forefront of decisions relating to Professional Learning.

Since the new curriculum places an emphasis on collaboration, respondents had a tendency to comment that additional INSET days will be necessary to allow practitioners to come together to co-design curriculum elements and share good practice. Cross-subject and cross-key stage working is recognised as a core principle behind the new curriculum. While some Professional Learning and planning can be undertaken during PPA periods or similar, practitioners will need

dedicated time together to develop their vision and curriculum, ensuring a cohesive approach to pedagogy and curriculum content across the school. Similarly, schools require dedicated days to work in collaboration and share good practice with other schools in their clusters.

Respondents noted the importance of taking into consideration the scope of education reform as a whole when making decisions relating to Professional Learning opportunities. Respondents expressed awareness that additional INSET days should be considered within the context of a range of educational reforms occurring over the next few years. Key changes to consider include changes to Professional Learning structures, teacher pay and conditions, self-evaluation approaches, new approaches to assessment and inspection and ALN reforms.

Respondents tended to emphasise that considered, consistent and effective implementation of the new curriculum will require dedicated time such as INSET days. Schools are starting their curriculum reform journeys from very different circumstances and sufficient Professional Learning time, planning time and support or guidance from middle tier organisations and unions is vital to do justice to the vision for education in Wales.

However, there is some awareness amongst respondents that a balance must be achieved between providing additional INSET days and avoiding a negative impact on working parents and/or learner outcomes. Respondents tended to comment that the impact of additional INSET days on parents must be mitigated and the number of days for which learners are out of the classroom should be limited.

Outcome of the consultation

Following analysis of the consultation, and the completion of an Integrated Impact Assessment, the Minister for Education approved the following:

1. Amend the Education (School Day and School Year) (Wales) Regulations 2003 to provide one additional INSET day per year for 3 years, until 2022, to focus specifically on Professional Learning to support the new curriculum.

The responses analysis shows a clear agreement, from over 90% of respondents, with our proposal to increase the number of INSET days for Professional Learning to support the introduction of the new curriculum.

The additional INSET day is seen as necessary by practitioners, Unions and middle tier organisations such as Local Authorities, Regional Consortia, Estyn, Education Workforce Council and the National Academy for Educational Leadership. This reflects complex and large-scale reform, and capacity building which is needed for practitioners to be able to deliver the curriculum.

Many respondents called for more than one additional INSET, and for a longer period than the three years proposed. We are not proposing to amend the

regulations to longer than three years because in that time the wider context of the NAPL will be developing, we will be continuing to gather evidence and undertake research into the use of INSET and to monitor changes within the wider system that may have an impact on our approach. All of the factors have the potential to lead to further developments or changes in the future.

2. Amend the regulations to specify that the additional Professional Learning INSET days should take place annually, during the summer term

The consultation responses showed that two thirds of respondents agreed that having either a specified date or period would be beneficial, but many responses emphasised that there were practical issues with having a specified date. These included the challenge of accessing the experiences of colleagues from pioneer schools and others within their clusters. One third of respondents felt that when the INSET took place should be for the school to decide to allow for pre-planned training and school autonomy.

We are therefore proposing that the INSET day will take place within a specified period rather than being held on a specific day. Holding the INSET days at a similar time, albeit with a degree of flexibility, will help create a national conversation and ensure all teachers are receiving the same messages, and none are left behind

We are proposing that the summer term would be an appropriate time to hold the INSET days. For the first year, the summer term would allow us time to secure resources, and in the second year this will allow us time to evaluate the impact, making any changes necessary. We will recommend that to reduce the impact on families that generally schools should consider carefully the timing of the day and that all INSET days should be publicised well in advance.

3. A recommendation to schools that out of the original five INSET days already allocated to schools, a minimum of a further one day should also be used to prepare for the new curriculum, this to be taken at a time to suit the school.

This approach reflects the feedback in the responses, where 78% of respondents felt that one additional day would not be sufficient. Welsh Government agree that more time will be needed but that this could come out of one of the pre-existing INSET days, reflecting the fact that those who felt that their schools used the INSET days well are already using them to work on their implementation of the new curriculum.

We cannot fully justify more than one additional INSET day per year given the additional financial burden this would place on some parents, often those who can afford it least. There is also the tension between our approach to prioritising children's attendance and providing less available school days overall.

Instead, we recommend to all schools that they use another of their pre-existing INSET days as an approach to support their readiness for the new curriculum.

To support this, a bank of resources would be available for schools to use to support them on these days (see below).

4. The development of a bank of resources which can be used to guide INSET sessions.

The consultation asked for thoughts on whether WG should mandate the content of the material for the INSET days. The responses to this question were divided with 37% feeling that we should not, and 38% that we should, with the rest undecided.

Many felt that the choice should be made by schools, and that our approach to these additional INSET days should reflect the ethos of the new curriculum by providing practitioners with greater agency. We agree that flexibility will be essential, but that clearly there are some schools for whom a steer would be useful.

The use of the word 'mandatory' in the text of the consultation may have implied we planned to be very prescriptive in regard to the content to be offered to schools. What we propose however is, that a bank, or framework, of resources should be created which schools will be able to choose from, depending where they are on their own individual curriculum journey. A bank of online, bilingual resources should enable enough differentiation for schools and enable them to pick and choose the specifics in regard to the new curriculum that they need to cover on the INSET days.

We propose to secure these resources over the next nine months so that they are ready for schools to use them by Summer 2020.

The use of INSET, and their effectiveness, will be the subject of a piece of research work to be undertaken by University of South Wales. This learning will feed into the resources to be developed as well as wider thinking on the use and purpose of INSET.

9. Competition Assessment

Not applicable

10. Post implementation review

This is a short term legislative change, for 2019-2022 and so a review will take place at the end of the three years. However the effectiveness of the INSET day themselves will be evaluated following the first year, to ensure it is adding value.

