

Explanatory Memorandum to the Curriculum Requirements (Amendment of paragraph 7(5) 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Curriculum Requirements (Amendment of paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Kirsty Williams
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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:

- Section 69 of, and Schedule 19 to, the School Standards and Framework Act 1998,
- Sections 109, 110 and 116A to 116K of the Education Act 2002,
- Orders made under section 108 of the Education Act 2002,

to the list of enactments that can be disapplied by the Welsh Ministers for a specified period by notice.

The provisions added to this list of enactment confer functions on local authorities, governing bodies, head teachers and others in relation to the basic curriculum for Wales. That basic curriculum includes the following:

- Religious education
- Sex education
- Work-related education
- Personal and social education
- National Curriculum for Wales and
- local curriculum.

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. This is to ensure that the legislative requirements related to the provision of the curriculum can be disapplied prior to the increased operation of schools. This is necessary to ensure schools have the flexibility to focus on the health and well-being of learners, supporting them to re-integrate back into a school environment. It will also support schools to operate a blended learning approach of in-school and remote learning, creating space to do this by removing prescriptions that were designed to be delivered in a classroom environment.

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) of the 2020 Act that can be disapplied by the Welsh Ministers for a specified period by notice.

These Regulations are being made under the made affirmative procedure.

4. Purpose and intended effect of the legislation

Paragraph 7(5) of Schedule 17 to the 2020 Act sets out areas in respect of which the Welsh Ministers may issue notices to temporarily disapply statutory education requirements to help mitigate the effects of the COVID-19 pandemic and enable the sector to adapt to the circumstances it is currently operating in. One of these areas is section 101 of the Education Act 2002 which places requirements on maintained schools in Wales to provide a basic curriculum including; the national curriculum, religious education, personal and social education, work related education and for secondary schools, sex education.

In preparing for the increased operations of schools consideration has been given to current statutory requirements and whether schools and governing bodies could effectively meet these without a disproportionate administrative burden and in line with social distancing requirements. This identified the need to disapply related curriculum provisions and associated assessment arrangements, namely:

- Section 69 of, and Schedule 19 to, the School Standards and Framework Act 1998 regarding the provision of religious education.
- Section 109 of the 2002 Act which requires the National Curriculum for Wales to be implemented in maintained schools in Wales and section 110 which requires it to be implemented in maintained nursery schools and some other nursery education settings in Wales.
- Sections 116A to 116K of the 2002 Act which make provision about the local curriculum including requirements that all young people are provided with a minimum offer of choices:
 - 25 choices at KS4 with a minimum of 3 vocational choices
 - 30 choices at post 16 with a minimum of 5 vocational choices
- Orders made under section 108 of the 2002 Act. This section enables Welsh Ministers to make orders relating to the national curriculum imposes requirements on schools to deliver desirable outcomes, education programmes, and assessment arrangements for Foundation Phase

provision, and attainment targets, assessment arrangements including moderation and programmes of study in respect of Key Stages 2, 3 and 4. The requirements for all learners in Year 2 to 9 in relation to the paper based reasoning tests and the online personalised numeracy and reading assessments, are imposed via Orders made under section 108. There is no need to disapply section 108 because no duties arise under that section – only the orders made under it.

These provisions are not currently listed in paragraph 7(5) of Schedule 17 to the 2020 Act and as such regulations need to be made to add these provisions to paragraph 7(5) so that the Welsh Ministers may issue notices to temporarily disapply statutory requirements.

Rationale for proposed disapplication

Since 20 March 2020 schools have remained open only for vulnerable children and young people and children of critical workers, in order to reduce the transmission of coronavirus and whilst attendance has fluctuated it represents approximately 1.4% of the overall school population.

Since the start of the summer term, the majority of learners have therefore been undertaking remote learning with their schools, supported by the resources and guidance provided by the Welsh Government's continuity of learning programme "Stay Safe, Stay Learning". The nature of this remote learning will vary by school – the approach that they are taking and the resources and staff they have, the age of the learner, the ability of the learner to engage with remote learning and the resources available to the learner at home both in terms of parental or carer support and also working environment, digital resources and connectivity.

On 3 June, the Minister for Education announced that schools would increase operations from the 29 June until the 24 July, so all learners have the opportunity to 'check in, catch up and prepare for summer and September'. As more learners return to the physical school environment, practitioners will be operating in a very different context. This will continue for the foreseeable future and will be a blended learning approach – a combination of face to face learning with remote learning.

As such disapplication of the curriculum requirements and associated assessment arrangements will give schools and nursery settings the flexibility to respond to the unprecedented circumstances presented by COVID 19 and allow maintained schools and maintained nursery schools to focus and prioritise learning to meet the changing needs of learners in this time. Particularly as these the curriculum and assessment requirements were designed for traditional classroom based practice. Schools will be focusing on the health and well-being of learners and as they start to welcome certain learners back, further space and flexibility will be required to allow schools to focus on supporting learners back into a normal school environment, particularly where many learners will have faced different challenges and therefore progressed at different paces.

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) in respect of which the Welsh Ministers can make notices to disapply 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, schools will not have to teach the curriculum or undertake the associated assessment arrangements, but they may choose to do so if that is of benefit to their local context and learners.