

31. Guidance was issued on Friday 20th March 2020 in relation to Governance in decision making during COVID-19, which has been noted.
32. It should also be noted that DfE are also experiencing a similar situation, following Wednesday's announcement. It is important to note schools have not been closed, they have been repurposed at a time of national crisis to support key workers and vulnerable children. We are confident that schools and others will respond positively to this guidance.
33. We do intend to take a power in the COVID-19 Bill that would give us the power to close schools given the scale and urgency of the emergency, to have these available in exceptional circumstances. We will be constantly assessing the position based on what the Chief Medical Officer tells us about whether the scientific evidence would require us to close schools.
34. The Prime Minister also set out on 18th March, their current position is that schools should be closed from Friday 20th except for the children of key workers, and vulnerable children. The scientific advice shows that these settings are safe for this small number of children to continue attending – but asking others to stay away will help us to slow the spread.
35. Decisions on future advice to schools will be taken based on the latest and best scientific evidence.

Legal

Legal Advice

36. The legal advice that is relevant to the issues raised in this MA is as follows.

Announcements/Statements by the Minister regarding the issues of bringing forward the Easter holidays, the repurposing of schools and the cancellation of exams

37. No legal advice was sought before these announcements/statements were released.
38. The power to vary the dates of school holidays is a local authority or school governing body power, not a Welsh Ministers power. The relevant power, section 32A of the Education Act 2002, provides that an LA or governing body can change term dates after it has consulted (a) the local authority, (b) each relevant governing body in the local authority's area, and (c) the Welsh Ministers. It appears to me that the only role Welsh Ministers have in changes to term dates is as a consultee. It may be that all consultees were consulted and that the Welsh Government made the announcement on behalf of LAs/school governing bodies, but Legal Services are not aware that such consultation had taken place.

39. In relation to the cancellation of exams, the Minister's statement said that she had met with Qualifications Wales and the WJCE. There are no powers for the Minister to cancel exams as far as Legal Services are aware, but the statement does not provide for this. There is a power in s.108 (2) of the Education Act 2002 to make provision about KS4 assessment arrangements. No assessment Orders have been made under that power for KS4. There is also a duty on schools to enter children into public examinations under s.402 EA 1996 which may assist. Legal Services are not aware of any provision in education law which requires examinations to be held (and by that measure, cancelled). In addition, Qualifications Wales have powers in relation to WJEC in the Qualifications Wales Act. In any event, the Minister has powers as a Welsh Minister under section 62 of the Government of Wales Act to make representations on any matter affecting Wales. She also has general powers in section 60 regarding the social well-being of Wales and in section 58A.
40. There are temporary school closure powers in the Coronavirus Bill, but these are not yet in force. They will come into force when the Bill receives Royal Assent. They will not be retrospective and therefore not provide legal cover to the Minister's announcements/statements.

Data Collection Issues

41. The data for the PLASC and EOTAS collections is generated by the schools. The data is provided by the schools to the local authority. The Welsh Ministers collect that data from the local authority relying on section 29 of the Education Act 1996. That section allows the Welsh Ministers to require local authorities to provide such information as it requires in exercise of its education functions. Welsh Ministers do not have to exercise that power in section 29. Not exercising the power in section 29 of itself does not cause any legal difficulty.
42. There is an issue in how that data gets from schools to Local authorities in the first place. The data being collected in these censuses are all data about pupils e.g. exam performance. That transfer of data between schools and LAs is governed by the following Regulations.

43. The School Performance Information (Wales) Regulations 2011:

These regulations place a duty on head teacher to transfer the prescribed information to the governing body on an annual basis. In practice, that does not pose a problem for present purposes. However, prescribed information must also be sent direct by the school to the Welsh Ministers each year. Where the Governing body receives the data from its HT, it is under a similar duty to send the prescribed information to the LA. These data transfer duties apply automatically every year. It must be provided before the end of the school year. Therefore, instructing local authorities and schools that there will be no data transfer does not "suspend" the data transfer duties.