



Llywodraeth Cymru
Welsh Government

From:

NR

Education, Business Planning &
Governance Division

I&S

Cleared by:

Huw Owen, School
Effectiveness Division

Date:

20 March 2020

MINISTERIAL ADVICE

For decision by: Kirsty Williams, Minister for Education

Copied to: First Minister and Minister for Finance and Trefnydd

Subject	The repurposing of School Settings in response to COVID-19.
100 word summary	The repurposing of School Settings in response to COVID-19.
Timing	Urgent.
Recommendation	The Minister is asked to note this advice.
Decision report	This decision will require a Decision Report.

ADVICE

Background

1. Following the outbreak of COVID - 19, officials have continued to have regular discussions both formal and informal with the UK Government (DFE) on operational handling, including the call centre element on handling requests from the public on matters relating to schools. It was clear from the discussions that the situation was constantly changing, public concerns were escalating overtime, and requests to the recently established UK government helpline were reaching an unmanageable point. .
2. Officials have continued to hold regular daily talks with key individuals leading on the COVID - 19 operations in England, and Scotland, these have included with the Chief Scientific Officer, DfE, Scottish Government colleagues and Educational officials have also received feedback from COBR and for Wales SAGE.
3. On Monday 16 March, following scenario planning within the WG's Department for Education based on the latest intelligence, and having reflected on No10 press briefing and the subsequent discussion with the Minister for Education. An increased emphasis was placed on policy issues that may arise should schools in Wales close for their current purpose as education settings. Initial work was scoped out and this has continued to evolve through working closely with key stakeholders.
4. On Tuesday 17 March at the 9.00am dial in discussion between WG officials and the Minister for Education an update was provided on the latest intelligence from the COVID-19 professionals which included the latest developments from COBR on 16th March, including the step up to 'delay' and the further developments on social distancing. Queries/ concerns continued to be raised via unions, some LAs and parents via social media on what this meant for schools and children in Wales. With this in mind it was agreed officials would develop a letter to schools with many questioning the ability to continue opening and try to address some of these points.
5. However, developments continued to rapidly change through Tuesday, and it was decided late Tuesday afternoon delay issuing the letter. The final agreed draft is attached at Annex A. Later on Tuesday, officials were then presented with further information following a meeting between the First Minister and the Minister for Education, and in light of the latest COBR meeting it was agreed that **the Easter holidays for schools in Wales should start a week early – i.e. Friday 27th March 2020**. It was not confirmed that schools would close until September, the position was still that this would be under constant review.

6. Following the meeting between the FM and the Minister for Education further details were sought regarding:-
 - how we might **manage FSM provision** in that week from the 30 March to the 3 April; and
 - childcare for key workers during that period
7. From discussions with the Chief Scientific Officer and DfE officials, it was also understood that the science from SAGE was being updated to model the potential impacts of school closures. Following discussions with the DfE lead Director of COVID-19 that evening the view was that, particularly in light of the changing position in London, it was possible that measures to manage the outbreak, including school closures heightened, due to public opinion and behaviour not changing, but that this would remain evidence based. And be introduced much earlier possibly within 5-7 days.
8. A further discussion took place with the Chief Scientific Officer for WG in relation to what the evidence was indicating on Wednesday morning. It was clear from discussions with the DfE as well as social media, correspondence and media reports in Wales that it was clear that school closures were under active consideration, as the escalating situation was not slowing down. There were a number of schools showing signs that they would not be able to function safely, particularly in terms of deteriorating attendance of staff and pupils.
9. Officials from the Scottish Government also made a decision to close schools and had informed us this was likely to be announced on Wednesday. We were also in close contact with Unions and LAs again during this time. Social media and the press were all describing what was becoming an untenable situation, which was in some schools placing them at risk. It was therefore agreed based on the evidence and intelligence presented to us we needed to respond rapidly to the situation which was quickly deteriorating.
10. Strategic partners, schools and parents were looking to WG for clear guidance on schools, in light of the evolving picture; these views were supported by the Leader of the WLGA. A press statement was developed stating that schools would not be able to operate as business as usual, and would need to evolve in order to support the national COVID -19 crisis. This intelligence also suggested that action was needed to move the Easter holiday start date to 20 March 2020 instead of 27 March 2020.
11. Officials were in discussion with Scotland on our approach and during this time, the Minister's office was also in discussion with DfE.
12. The final press statement is attached at Annex B for information. Officials continued to take advice from the Chief Scientific Officer during that day, and were able to understand and refer to evidence presented to SAGE and COBR. Based on the evidence, DfE and Scotland also published similar statements

on Wednesday 18th March 2020. These can be accessed via the following links.

<https://www.gov.uk/government/news/schools-colleges-and-early-years-settings-to-close>

<https://www.gov.scot/publications/statement-covid19-managing-impacts-scottish-education/>

13. Through communications during and since that period, we have been clear that continuity of education and the wellbeing of our learners is paramount, and for those reasons following closure the majority of schools will have a different purpose from 20th March. It is intended that schools will become a place where support is provided to those most in need, this will be for key workers including people involved in the immediate response to the coronavirus outbreak, to enable them to remain in work and our most vulnerable children.
14. This continues to be an ever - changing, unprecedented situation. Officials will continue to be guided a by the evidence being presented by our professionals working through the ECC, and will keep the current arrangement under continuous review.
15. We will continue to work closely with all our key stakeholders to develop arrangements that are practical and resilient, further advice has today been agreed under MA/KW/1046/20 on the definitions of key workers and vulnerable learners. The various strands of work/policy development needed to mitigate impact on the schools closing early for Easter.
16. We understand that schools, working with their Local Authorities have already been preparing for such a scenario including developing programmes to ensure continuity of learning. This remains a key focus for officials and work is well underway to ensure provision is available for all our learners.

Advice

17. Based on the discussions that took place in the days leading up to the 18th March, from the 20th March, schools will no longer be used for statutory provision of education. Schools will instead have a new purpose. They will open to the majority of learners with help and support to those most in need, including people involved in the immediate response to the coronavirus outbreak; and the key areas of support and safeguard the vulnerable.
18. Officials will continue discussions with DfE and Scottish Government and key stakeholder to finalise plans going forward, and will continue to work closely with key stakeholders on how best to meet the challenges, based on the latest scientific and medical advice. To date all LAs and unions have welcomed the move to the repurposing of schools. Las and their schools have worked hard to put plans in place to ensure continuity of learning of all children, along with

providing immediate support to the children of key workers and vulnerable learners within the public health guidance available.

Data collections from schools

19. Under the new purpose, and meeting the unprecedented changes schools will have from 23 March 2020, the collection of data from schools will need to be suspended. Several statutory data collections from schools were due to start prior to the autumn term. Local Authorities were notified on 19 March 2020 that the following collections are cancelled:
 - Attendance: Primary 2020
 - Attendance: Secondary 2020
 - National Data Collection (NDC) 2020; and
 - Welsh National Tests (WNT) 2020 (no longer taking place).
20. The Pupil Level Annual School Census (PLASC) and Educated Other Than At School (EOTAS) 2020 data collections are currently open. Almost all schools have returned their PLASC data and around half of Local Authorities have returned their EOTAS data. The Data Exchange Wales initiative (DEWi) will be closed at 15:00 on Friday 20 March 2020 and officials will then carry out an analysis of the returned data to determine its usability so as to not put all the effort already put in by schools and Local Authorities to waste. There is currently no intention to carry out the normal validation period on these data collections.
21. DEWi will also be closed for 2019 School Workforce Annual Census (SWAC) returns at 15:00 on Friday 20 March 2020. The 2020 SWAC collection is scheduled to take place in November 2020. The planned implementation of Phase 2 of the collection, covering retrospective elements about the previous academic year (i.e. 2019/20 data in the November 2020 collection), was due to be included. Implementation of this phase of the collection has now been postponed until November 2021. Therefore, the collection of recruitment, retention, supply and absences data will no longer be collected via SWAC in November 2020 and will now be postponed until the 2021 census.
22. The Post-16 data collection is due to take place in September 2020. Officials are currently considering the approach to this collection, including whether it should also be cancelled, and further advice will be provided, if necessary.
23. The recommended actions with respect to data collections from schools amount to postponement under the School Performance Information (Wales) Regulations 2011, Education (Information About Individual Pupils) (Wales) Regulations 2007, and Education (Supply of Information about the School Workforce) (Wales) Regulations 2017. Legal Services have advised that there are no legal issues with taking this approach. This is in line with the Minister for Education's commitment to look at where the requirements on schools can be relaxed given the extenuating circumstances.

Use and reporting of school data

24. Following the announcement relating to the repurposing of school for pupils and cancellation of the summer GCSE, AS and A Level examinations series for 2020 (MA/FM/1010/20), normal arrangements for the reporting on Key Stage 4 and post-16 performance measures will be suspended. This includes suspending the production of the All Wales Core Data Sets for schools and local authorities, and relevant aspects of the My Local School website, as the majority of the data required will not be available.
25. To reduce burden and ensure schools are not held to account on the basis of any available data impacted by COVID-19, it is also recommended that associated statutory requirements for schools are either suspended where appropriate or significantly reduced. This will impact on regulations about school performance and absence target setting, as well as those which provide for the reporting of school information.
26. This has to be balanced with obligations to parents and others, who will still need to know about learner progress over the course of the academic year to date. It is anticipated that where some statutory reporting requirements remain, there will need to be flexibility around the timing and content of school reports, such as reports to parents and school governor's annual reports.
27. To ensure that funding based on the pupil data usually collated via these statutory collections continues to be allocated in a fair and appropriately targeted manner, alternative methods of allocating funding may need to be investigated, should the reliability of the non-validated PLASC data submitted by 20 March 2020 be deemed sub-optimal. This will be done in partnership with Local Government Finance policy leads.

Financial implications

28. For schools, there should not be additional financial implications arising from this advice at this stage. The decisions recommended in this MA will clarify the focus of ongoing schools based provision. However due to the unprecedented circumstances, there could be further implications as work progresses. Officials continue to work closely with Local Government to understand the financial implications associated with these circumstances, and will be providing financial support to Local Authorities (MA/JJ/1027/20 refers).
29. It is initially also our intention to provide funding of up to circa £550k in 2019-20 to the WLGA for the purpose of COVID -19 activity. This will be funded and is affordable via the Youth Engagement and Employment BEL within the Education MEG. Further advice will follow on this shortly.

Communication

30. Communication with LAs, Schools and the public will continue on a regular basis over the coming weeks.

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.

The only qualification to that duty is: “The duties of governing bodies, authorities and proprietors to make available, provide or publish information apply only to the extent that that information is available to them in time for it to be reasonably practicable for them to make available, provide or publish that information before the latest occasion on which that information is required to be made available, provided or published, as the case may be.”. It maybe that they do not have the data and will not have the data in the foreseeable future. Legal Services do not know if that is the case. If that were right then they would not have to provide the data.

44. The Education (Information About Individual Pupils) (Wales) Regulations 2007:

The postponement under these Regulations does not give rise to any legal issues. These require the governing body to provide the prescribed data to local authorities within 14 days of that request. They are not required to do it on an automatic annual basis or to send anything direct to Welsh Ministers. As long as no request is made by a local authority schools will not be under a duty to send any data. In light of the proposed instruction it would be extremely unlikely a local authority would request this data.

45. Education (Supply of Information about the School Workforce) (Wales) Regulations 2017:

The postponement under these Regulations does not give rise to any legal issues. The collection is triggered by a request by the WM. As long as that request is not made the duty will not kick in.

General

42. Decisions that are being taken in the absence of legal advice being given and there is a possibility that those decisions could conflict with statutory provisions that potentially could impact on or impede the effects of those decisions. There is no provision in the Coronavirus Bill that would enable these decisions to be ‘regularised’ – provide retrospective legal cover.

43. If the schools, are closed for an extended period of time, possibly to the end of the school year then these duties and a number of other relating to assessment, reporting to parents etc. simply cannot be complied with. There is a question over how we address that problem which we will have to discuss further. A complication is that schools are not entirely closed they remain open to some degree and so presumably these duties still bite. If that were right they would need to be suspended which would require legislation. There is a limited power in the table to Schedule 16 of the Coronavirus Bill to suspend the requirements of the national curriculum. That does extend to some of the issues mentioned above such as school reports at the end of the year to parents by the Head Teacher.

44. Legal Services will continue to work with policy officials to identify statutory or other legal obstacles/impediments to the decisions that are being taken and seek to find legal solutions where possible.”

CLEARANCE TRACKING

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	EPS/KW/45/20
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Huw Owen have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

Mandatory MA cc list

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

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