



Llywodraeth Cymru
Welsh Government

From:

Name Redacted

EPS Curriculum

Cleared by:

Ruth Conway

Date:

2 June 2020

MINISTERIAL ADVICE

For decision by: Minister for Education

Copied to: All Ministers

Subject	Increasing Operation of Schools
100 word summary	Suggested options for increasing operation of schools before the end of the Summer term. There are two main options relating to the term date and depending on the decision there is then two further options relating to the cohorts of learners. The options focus on the period up to the end of the Summer Term however these have implications for next academic year.
Timing	Urgent. An announcement is scheduled for Wednesday, 3 June to give local authorities, schools and settings sufficient preparation time for increasing operations from 29 June for this term.
Recommendation	The Minister is asked to confirm: for both Part 1 and Part 2 which of the two options are preferred for increasing operation of schools.
Decision report	This decision will be supported by a decision report.

ADVICE

Background and purpose

1. On the 15th May 2020, The First Minister published his roadmap, **Unlocking our society and economy: continuing the conversation**, which builds on its sister paper, **'Leading Wales out of the coronavirus pandemic: a framework for recovery'** which was published on April 24th. Alongside this the First Minister announced a red, amber, green traffic light system to define how restrictions on different areas of Welsh life can begin to be eased. The traffic light categories include 're-opening of schools and childcare setting'. Under amber this included 'Priority groups of pupils to return to school in a phased approach' and under green 'All children and students able to access education'
2. Recent advice (MA/FM/1722/20) set out a view on the impact and effectiveness of lockdown measures, including the requirements and restrictions imposed by the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020. The review was carried out under regulation 3(2) and was required by 28 May; subsequent reviews are required every 21 days. Under Stage 1 it did not allow for a significant reopening of education and childcare settings at this time. It made clear that a critical factor for reopening will be having an effective Test, Trace and Protect system operating which could be possible by the time of the next review period on 18 June. The advice also set out that it may be possible for some limited reopening no earlier than 22 June, though the degree to which this would be possible couldn't not be determined at that time.
3. On the same day as the FM published the road map you set out your 5 principles for determining when and how schools will increase operations, supported by a framework for making decisions. The development of this framework was informed by discussions with key stakeholder groups - Head teachers, Middle Tier and Unions. These principles are:
 - The safety and mental, emotional and physical wellbeing of students and staff
 - Continuing contribution to the national effort and strategy to fight the spread of COVID-19
 - Having the confidence of parents, staff and students – based on evidence and information – so that they can plan ahead
 - Ability to prioritise learners at key points, including those from disadvantaged backgrounds
 - Consistency with the Welsh Government's framework for decision making, to have guidance in place to support measures such as distancing, managing attendance and wider protective actions.
4. In using these principles, as set out in the framework, any decision has to weigh up a number of factors. Any increase in operation will only be considered when certain scientific/medical criteria are met. However, that will not mean there is no risk but that we are satisfied that the level of risk can be tolerated as part of the wider lockdown restrictions. That coupled with other considerations such as any

adverse effects on well-being of not going to school would outweigh the risks of COVID: for both learners and staff.

5. Following the launch of the decision framework, and to provide some clarity given announcements in other parts of the UK, you were clear that there were no plans to increase operations in schools before the 1st June, and that any decision would be made in line with your decision framework. With announcements already having taken place across the rest of the UK, the public are looking for clarity on whether there are plans to increase operations in schools in Wales for the remainder of this Summer term. There are various models being adopted across countries. In line with the expectations set out in your decision framework we have worked closely with a range of partners to help shape and inform the proposals set out in this advice including ADEW, the middle tier and head teachers group, the Unions, the Chief Scientific Advisor (CSA), Chief Medical Officer (CMO), PHW and the Technical Advisory Group (TAG). We have also undertaken work with parents, children and young people.
6. Expectations for learning: There is only limited time before the summer break and schools will have limited opportunity to engage with their learners. We would therefore encourage schools to use this time to:
 - support the health and well-being of learners: learner (and staff) well-being should be the foremost priority;
 - “check in” with learners and support them in their preparedness for learning and consider next steps for learning as appropriate, regardless of whether we require or simply expect schools to increase operations, we will issue guidance to support schools’ operations and the development of learning. *We propose to issue this later next week, and will be shared in a separate MA.*
7. On Monday 25th May you presented a proposal to the Unions of bringing forward planned term dates for the summer term and for the next academic year. Evidence from the Chief Scientific Adviser suggested that COVID-19 is less transmittable in the sunlight, so there may be benefit in bringing forward the summer holidays to around 22nd June, with learners returning to school around the beginning of August, when there is more opportunity for outdoor learning. This would also potentially provide opportunity for children to have face to face contact ahead of any possible second wave during the autumn. Unions were asked to undertake a light touch consultation with members and respond. You held a further meeting with Unions on the 29th May during which the unions presented a joint statement that set out they could not agree to this proposal.
8. At the meeting on 29th May further proposals (includes two options for the timeframe as set out in Part 1 below and two options for which group of learners as set out in Part 2 below) were presented to the Unions, they were asked to consider and respond by Monday 1st June.
9. These discussions have all been based on the assumption that access to on-site face to face provision for children of critical workers and vulnerable children would continue to operate. The intention here is that they will have the same access as other learners. In parallel to this, as schools increase operations, we would expect schools to make further non-education provision for children who were attending hubs for the time they require it.

10. The Welsh Government objective here is to facilitate increasing operation of schools before the summer holidays and to ensure that the schools are back open for a sufficiently long period to enable the 'welfare/education check in' to be meaningfully provided.
11. This MA sets out some of the options to achieve that objective. Whilst we do not propose to formally consult on your preferred option, as set out in paragraph 5, there is ample evidence of appropriate and detailed engagement with a number of different stakeholders/interested parties leading up to the proposed announcement of the preferred option on 3rd June. Additionally, all options put forward here give a 3 ½ week lead in time before their start date. This therefore gives another opportunity for interested parties to express their views prior to the start date.

Part 1 - Options for timeframe for increasing operations

12. In light of the evidence presented and being guided by key stakeholders, we have identified two possible options that are feasible and satisfy the health considerations outlined in the framework, including the medical and scientific advice (set out in the note developed by TAG attached at Doc 1) and your principles:
- **Option 1 - Increase operations this term and keep the planned term dates for this term and next academic year:** Schools would return on the **29th June** for the remainder of the summer term, currently ending on 20th July. The new term would start on or around 1 September or
 - **Option 2 - Increase operations this term and redistribute one week of the summer holiday to around the autumn half term:** Schools would return on the **29th June** until the 27th July. The new term would start on or around 1 September.

The benefits of both approaches are:

- Allows children contact time before summer holiday – important social, learning and attainment gap benefits. Feedback and evidence demonstrates that contact time is more effective for learning, allows children to revisit and develop relationships, with important well-being and developmental benefits. There is also evidence that summer holidays have an adverse impact on the attainment gap. This also prepares learners for contact time after the summer holidays.
- Ensures learners have had at least some contact time if operations are decreased in the autumn in a response to a second peak
- Current summer holiday could act as a 'circuit breaker' (MA /FM/1722/20 provides further detail) in attendance to counter any adverse effects on transmission.
- Allows schools to test operations before the autumn term

In addition, option 2 has the added benefits that:

- It allows schools more contact time for learners before the summer and gives more time to apportion between learners, therefore potentially increasing capacity over time
 - It gives longer to test and 'bed in' operations in advance of the autumn.
 - It provides staff a longer break in the autumn, which is likely to be a long and challenging term
13. Trade Unions made objections to proposals bring forward the end of the summer term and the start of the autumn term (both by 4 weeks) on the grounds of: it being logistically difficult to arrange; having impacts on contractual issues and staff will have holidays booked. These objections of course remain in principle with option 2, but their impact is significantly minimised by the fact that it relates only to one week in July.
14. It is currently unclear whether extending term time is lawfully deliverable within the terms of teachers pay and conditions. Policy and legal are working through at pace the possibilities regarding teachers pay and conditions but, at the very least, there are a number of tricky contractual issues in play.

Part 2 - Which groups of children/learners should attend?

15. A framework has been developed at Doc 2, which considers potential modelling of children attending school or setting. The framework set out 7 options for this. However, in light of recent discussions (particularly the Unions) these options have been narrowed down to two:
- **Option 1 - Targeting specific year groups in the shorter term, specifically years 6,10 and 12, with all learners having contact time in the next academic year**
16. Years 6, 10 and 12 would be brought in as much as possible before the summer to support preparation for transition and preparation for exams. They would attend to check in, receive support and ensure support in place. After the summer, we would move to option 2.

Benefits

- Some well-being benefit of learners leaving a school being able to return first
- Will help address well-being issues raised by those transitions
- Supports those taking exams next year.
- Anecdotally stakeholders have suggested that this may help support learners leaving education in respect of employment and work-based learning

Drawbacks

- Inequity for other groups of learners will increase over time – in any case, it is presumed that we would move to option 2 in the autumn

- **Option 2 - A principle of all learners having the opportunity for contact time before the end of the summer term and this continuing into the next academic year**

17. All learners attending school or PRUs would have the opportunity for contact time before the summer. This would include a 'check in', emphasis on well-being and where possible a focus on developing 'learning fitness'

Benefits

- Guarantees some contact/ learning for all learners; equity of provision.
- This could be done in weekly intervals focusing on a cohort each week, to allow a gap to break transmission
- Parents with learners in multiple year groups would benefit if children from one household could all attend together
- Ensures all learners have benefited from some contact time if operations need to be decreased in response to a further peak.
- Helps to begin to prepare learners for learning fitness for the autumn term
- Allows schools to help identify well-being needs and safeguarding issues

Drawbacks

- Parents/carers freed to work some of the time, but none freed to work all of the time as this is rationed out
- While benefit of learning is shared out equally among learners, the contact time for learners attending is reduced

Other options have been discounted on the following basis:

- Prioritising disadvantaged learners in that it would create stigma and may be difficult to define and be uneven across school cohorts.
- Prioritising Early years on the grounds that it would be very difficult to manage for the short summer period and would be very difficult to adequately staff
- Prioritising children of parents who need to work in that it would be very difficult to define and would result in inequity between those covered and those not.
- Expanding hubs provision in that it would result in no additional educational benefit.

When should we increase operations?

Health context

18. You have consistently said, you will only increase operations when the health context allows. We are taking advice from the CMO, CSA, and TAG and will only take actions which medical and scientific advice suggests are manageable.

19. The current trend is that infection and cases are reducing, allowing us to ease lockdown measures in a managed way. Younger children (under 11) seem to be generally less susceptible to infection than adults.

20. TAG have prepared a paper which summarises scientific evidence, primarily from SAGE, relating to any proposed increase in operations. This paper is being signed off by TAG on 3 June. A copy of the draft paper is at Doc 1.
21. We are also in early discussions about the offer of a potential antibody test for those practitioners currently working in Hubs; this offer may be extended to children attending the Hubs. Although this will not provide all the answers it will help understand further the prevalence of the virus in schools and help refine the next steps.

Means of increasing operation

22. The first stage to the means of increasing operations is the timing (Part 1 above). Through feedback from stakeholder groups, we have committed to giving as much notice as possible to the sector before increasing operation. The minimum time suggested by stakeholders is 3 weeks, in order to provide time for the sector to make the necessary plans before children return.
23. If The Minister makes a statement on the 3rd June 2020 signalling her preferred option providing the sector with 3 1/2 weeks' notice would mean schools could increase operations from the week commencing 29th June.
24. In taking forward any option this will be supported with operational and learning guidance, this is currently being developed and shared with all key stakeholders. We would look to signal that the guidance will be published next week but we could share an earlier draft for planning purposes ahead of this. A separate MA will follow for your consideration of the guidance.
25. You have already agreed to allocate up to £40.4m to enable local authorities to continue free school meal provision until schools re-open to all learners or up to the end of August if necessary. Discussions have been taking place with the WLGA regarding any logistical issues with provision of FSM in light of an increase in operations. It is not the intention for FSM provision to be double funded as a result of this decision, however this needs to be explored further to fully understand the various scenarios and any associated risks.
26. Officials are also working closely with the WLGA and local authority catering leads to identify the issues which will need to be taken into account before school meal provision can resume in schools across Wales, and, importantly, how these issues can be addressed. It is apparent that the circumstances of local authorities vary considerably and that a single solution is unlikely to work well in all areas. It is local authorities themselves who understand what will work best in their areas and our intention therefore is to set in place guidance which allows the flexibility of approach we believe is necessary in these unprecedented circumstances.
27. Discussions continue on the provision over the Summer holidays, and further advice will follow shortly.

28. Further detailed advice will also follow in relation to the increased operation of schools for the Autumn, along with a detailed IIA to support the increasing operations in the Summer term and Autumn.

DELIVERY OF THE OPTIONS

29. All the above options can lawfully be delivered by way of the Welsh Ministers exercising their own functions; Local Authorities and Governing Bodies exercising their functions, or a combination of the above. In addition, as we have seen in relation to the current closing and repurposing of schools, the Welsh Ministers can give a 'steer of direction' by way of a statement/announcement with Local Authorities and Governing Bodies then exercising their functions in accordance with that steer. A 'steer of direction' could be followed up by the Welsh Ministers exercising their own function if it transpires that the preferred option will not in effect be delivered by governing bodies and local authorities. For example, this could be by way of a Direction under the Coronavirus Act 2020 and such a Direction need not necessarily be Wales-wide in its application. It could, for example apply only to a particular school or Local Authority.
30. Different policy and legal risks are in play dependent on the chosen method of lawfully delivering the preferred option.
31. At the outset, it's worth noting that a way of seeking to ensure compliance with the Minister's preferred option is for the Welsh Ministers to exercise their own functions (be it a Direction or something else) and then be prepared to enforce that option (through the courts, if necessary) if there is non-compliance with it. However, there are significant reputational and practical risks if there's no desire or intention to ultimately pursue enforcement in that way. Those disgruntled with non-compliance are likely to look towards the Welsh Ministers to enforce their own direction, for example.
32. You have indicated in discussion with officials your desire to work with the WLGA and LAs to seek to achieve your policy aims. There are of course risks with such an approach as not all LAs/GBs may be supportive of your approach. You could, as part of your ongoing discussions make clear that whilst you could pursue a direction to achieve your policy aims this is not your preferred approach. As outlined above even issuing a direction doesn't necessarily guarantee compliance plus there is the issue of enforcement.

LEGAL ISSUES

33. If under Part 1, you decide to pursue Option 2 (alteration of school term dates) there are potentially a number of legal routes you could pursue. Option 2 could also be delivered by way of governing bodies and local authorities exercising their own powers.

Alteration of Term dates – part 1 option 2

34. A temporary continuity direction under the Coronavirus Act 2020 enables the Welsh Ministers (or local authorities if Welsh Ministers authorise them to do so) to

alter term dates for maintained and independent schools in Wales. Regard must be had to the advice of the Chief Medical Officer for Wales or the Deputy Chief Medical Officer and the direction must be necessary and proportionate. If the Welsh Ministers want to exercise their own powers in relation to the preferred option, a temporary continuity direction is probably the 'best fit' in these circumstances. However, this is subject to meeting the necessary and proportionate test. So, for example, if intelligence is pointing to their being some resistance amongst schools/local authorities/workforce to the Ministers' preferred option, this would bolster the legal case (at least) for a Direction to be necessary and proportionate. That necessity/proportionate case is arguably weakened considerably if the Direction ultimately will not be enforced by the Welsh Ministers if there's non-compliance.

35. There are alternative powers available as well.

- If all local authorities, governing bodies of VA and foundation schools and the Welsh Ministers agree then term dates for maintained schools in Wales that have already been set under the Education Act 2002 for a school year may be altered under section 32A of that Act.
- The Welsh Ministers may direct local authorities and relevant governing bodies to determine term dates for maintained schools in Wales in accordance with the direction under section 32B of the 2002 Act. Note, however, the consultation requirements set out below.
- It may be possible to use the Welsh Ministers powers under the Public Health (Control of Disease) Act 1984 to make regulations to alter the term dates of maintained and independent schools in Wales. Further discussion would be required with public health colleagues and OLC.
- It is not as clear that the powers of the Welsh Ministers to intervene in maintained schools under the School Standards and Organisation (Wales) Act 2013 can be used to alter term dates.

Section 32A and 32B of the Education Act 2002

36. **Section 32A of the Education Act 2002** provides that an LA must determine the term dates for each community, voluntary controlled or community special school or maintained nursery school in its area. A governing body of a foundation or voluntary aided school ("a relevant governing body") must determine the term dates for its school.

37. 'Term dates' mean the dates on which the school terms and holidays begin and end.

38. To ensure that the term dates determined are the same (or as similar as can be) for every maintained school in Wales:
- a. a local authority must co-operate and co-ordinate with each relevant governing body in its area and every other local authority in Wales; and
 - b. a relevant governing body, must co-operate and co-ordinate with the local authority and every other relevant governing body in that authority's area.
39. Each local authority in Wales must notify the Welsh Ministers of the terms dates which have been determined for a school year in respect of all the maintained schools in its area.
40. The Welsh Ministers have made the Education (Notification of School Term Dates) (Wales) Regulations 2014, SI 2014/1249 under the powers conferred on them by section 32A(6). Broadly speaking these regulations make provision for the form, content and the period in which the notification must be given. That period is no later than the final working day in August in the year two years immediately preceding the beginning of the first school year for which the term dates have been determined.
41. There is power for a local authority or relevant governing body to alter the notified term dates but only if the local authority, each relevant governing body in that authority's area and the Welsh Ministers agree.
42. The term dates for 2019-20 and 2020-21 have already been notified and so the powers to alter the dates could be used to change the Summer term dates. To alter the term dates for all of the schools mentioned above each local authority and each relevant governing body will need to agree to the proposals for all such schools.
43. However, a limitation of these powers is that they do not apply to independent schools.
44. **Section 32B of the Education Act 2002** provides a power for the Welsh Ministers to direct determination of term dates for maintained schools in Wales in certain circumstances. The Welsh Ministers may direct a local authority in Wales or a relevant governing body to determine such term dates for a maintained school in Wales as may be specified in the direction. The direction may, among other things, require the determination of dates that are different to those already determined (or altered) under section 32A.
45. Whilst there is a risk that this power can only be used to harmonise school term dates Legal Services are of the view that the power can be used in the present circumstances. The Welsh Ministers' power to direct local authorities and relevant governing bodies on the setting of term dates is:

- a. not limited to cases where local authorities and governing bodies do not agree on term dates, and
- b. allows Welsh Ministers to be able to use their powers to direct that different term dates are set for different types of school or different local authority areas (or parts of local authority areas).

46. The Welsh Ministers have made the Education (Consultation on School Term Dates) (Wales) Regulations 2014, SI 2014/1462 under the power conferred on them by section 32B(4). In exercising the power under section 32B the Welsh Ministers must consult in accordance with the provision set out in the Schedule to the regulations:

47. Note that none of the above applies to independent schools or PRUs. Although it would be unlikely a local authority would close a school and not its PRUs. PRUs are generally part of a school site anyway. However, to be certain a different power would need to be relied upon to alter the term dates of independent schools and PRUs.

<i>Period of notice the Welsh Ministers have of the term dates affected by the events or circumstances leading to the direction</i>	<i>Period of consultation on the direction</i>	<i>Method of consultation on the direction</i>
1 year or more	At least 12 weeks	By publication on the Welsh Government website and by such other means, if any, as the Welsh Ministers consider appropriate
1 year or less but more than 6 months	At least 6 weeks	By publication on the Welsh Government website
6 months or less but more than 3 months	At least 3 weeks	By publication on the Welsh Government website
3 months or less but more than 4 weeks	At least 1 week	By publication on the Welsh Government website
4 weeks or less	Such period of consultation, if any, as the Welsh Ministers reasonably consider appropriate	Such method of consultation, if any, as the Welsh Ministers consider appropriate

48. The Welsh Ministers must consult the following on a draft of the direction:

- (a) all local authorities in Wales;
- (b) the governing bodies of all voluntary aided and foundation schools in Wales;
- (c) the governing bodies of 10% of all community, voluntary controlled and maintained nursery schools;
- (d) the Welsh Local Government Association;

- (e) the Association of Directors of Education in Wales;
- (f) the appropriate religious body¹ for all maintained schools in Wales with a religious character;
- (g) the Catholic Education Service;
- (h) Her Majesty's Inspectorate of Education and Training in Wales;
- (i) the Children's Commissioner for Wales; and
- (j) all bodies representing the interests of members of staff of maintained schools in Wales.

49. In the circumstances specified in the row 5 of the first column the Welsh Ministers are not required to consult but if they do it must be with such persons as they consider appropriate.

School Standards and Organisation (Wales) Act 2013

50. **Section 11 School Standards and Organisation (Wales) Act 2013** - we could issue a direction under Ground 4 of section 2 (The safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise). That ground refers to safety and not health. If safety is read narrowly to physical injury something akin to broken limbs perhaps as the result of poorly maintained school premises or slipping on snow then it would not help. If it were read more expansively to include harm to health then it could cover the Covid crisis. We think a court is likely to give it an expansive reading in the context of Covid 19.

51. There is a process that would normally involve a warning notice. That can be omitted if there is a related risk to health and safety of the pupils. The case would need to be made for that and that it necessitated the need for urgent intervention. That may not be easy to satisfy given the schools are not generally open and for those that are open for vulnerable children and children of critical workers it is not clear why there is a particular risk to health and safety of pupils that would necessitate closure to coincide with the proposed earlier end of term date. Further thought would need to be given to who the direction would be to (1) to local authorities to use their powers to close schools from a certain date or (2) to governing bodies/head teachers to close their schools from a certain date.

¹ "appropriate religious body" in the case of a Church in Wales school or a Roman Catholic Church school, or proposed such school, the appropriate diocesan authority, and

in the case of other schools or proposed schools, the body representing the religion or religious denomination stated, or that it is intended to be stated, in relation to the school in an order under section 69(3) of the School Standards and Framework Act 1998.

"appropriate diocesan authority" has the same meaning as in section 142(1) of the School Standards and Framework Act 1998.

52. The Welsh Ministers must keep the circumstances leading to the direction under review and if the ground for intervention has been dealt with to their satisfaction or it is no longer appropriate for any other reason they must give notice to the local authority and the governing body which brings the direction to an end. Otherwise the direction continues.

53. These powers only apply to maintained schools.

Public Health (Control of Disease) Act 1984

54. Sections 45C, 45D, 45F and 45P Public Health (Control of Disease) Act 1984

we could make regulations under these powers. The current “lock down” regulations are made under these powers (Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020). Those regulations were made under Part 2A. That enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

55. The regulations may impose restrictions on individuals, businesses and others. In accordance with regulation 3, these restrictions apply for an “emergency period”. This period lasts until a direction is given by the Welsh Ministers specifying that the restrictions, or any one restriction (or part of a restriction), is terminated. The Welsh Ministers are required to keep the need for the restrictions under review every 21 days.

56. It is possible that regulations could be made (or amending regulations to the 2020 regulations) to require local authorities/governing bodies to close schools or even to vary term dates so that schools will close on a certain date. The restriction or requirement must be proportionate to what is sought to be achieved by imposing it. We would need to give further thought to this with public health colleagues and discuss with colleagues in OLC were we to pursue this route.

Coronavirus Act 2020

57. Section 38 of, and Schedule 17 to, the Coronavirus Act 2020 (“the 2020 Act”) provides the Welsh Ministers with powers to make temporary continuity directions.

58. Paragraph 2 of Schedule 17 to the 2020 Act provides that a temporary continuity direction can apply to one or more “relevant institutions”, which includes schools and local authorities. A temporary continuity direction could therefore direct all local authorities and/or all schools in Wales, as necessary. A temporary continuity direction is a direction that requires the responsible body of the institution (i.e. the proprietor of the school, or the institution itself) to, for a specified period, take the steps specified in the direction.

59. The specified steps must be in connection with the provision of, or services relating to, education, training or childcare, including ancillary services or facilities. Paragraph 2(4)(e) of Schedule 17 makes it clear that a temporary continuity direction may require the alteration of term dates. However, before the Welsh Ministers can give such a continuity direction, they must have regard to any advice from the Chief Medical Officer for Wales or one of the Deputy Chief Medical Officers for Wales relating to the incidence or transmission of coronavirus, and be satisfied that giving the direction is a necessary and proportionate action for or in connection with the continued provision of education, training or childcare.
60. Paragraph 3 of Schedule 17 also enables the Welsh Ministers to authorise a local authority to exercise these functions. Paragraph 4 of Schedule 17 requires all temporary continuity notices to be published.
61. If there is non-compliance with it, a temporary continuity direction made under the 2020 Act is to be enforced by way of an application to the High Court for an injunction.
62. Legal Services are of the view that such a direction can cover maintained schools and independent schools in Wales.
63. An additional issue in relation to extending the term time is its effect upon teachers pay and conditions. It is currently unclear whether extending term time is lawfully deliverable within the terms of teachers pay and conditions. Policy and legal are working through at pace the possibilities regarding teachers pay and conditions but, at the very least, there are a number of tricky contractual issues in play. This work encompasses identifying any legal impediments and, if so, whether they could be overcome or addressed (by legislation or other means) in the short timescale available.

Additional elements other than changing term dates

64. Setting the date in which schools will return and setting out what they will provide pre-summer break can also be delivered by way of the Welsh Ministers exercising their own functions; Local Authorities and Governing Bodies exercising their functions; or a combination of the above. In relation to Welsh Ministers functions, it's the powers in the Coronavirus Act 2020, the Public Health (Control of Disease) Act 1984 and the School Standards and Organisation Act 2013 which are most relevant.
65. Work is ongoing to modify the law appropriately to mitigate risks to local authorities and governing bodies where, in current circumstances, they are unable to always meet their legal obligations. This work will need to continue at

pace so that as many of the modifications as possible are in force by the date in which schools return.

Financial implications

66. There are no new financial implications as a result of this advice. In terms of hygiene and cleaning products LAs have already received funding to support this as part of the £30m additional funding to support LAs with the financial impact of Covid-19. This funding is to the end of June and any additional costs for July will need to be met from within school budgets or redeployment of staff / contracts from other closed council facilities. A proposal will be put forward to the Star Chamber for future funding to support the new school year.

67. EPS clearance number is EPS/KW/87/20

COMMUNICATIONS

68. The intention is for the Minister to make an announcement at as part of the daily press briefing on Wednesday 3 June. This will be supported by a communication handling plan.

Doc 1 Scientific paper



20200602_Schools
SAGE Summary_v2.0.

Doc 2

The framework

As the framework sets out, the assumption for all of these options, except 7 is that the purpose of provision would be learning. In the short term, this may only amount to a 'check in' and focus on well-being. These options can be combined at a reduced time for each:

1. Disadvantaged learners - Schools would be open to the most disadvantaged learners. This could be defined in terms of FSM or capped at a specific percentage or defined in another way.
2. Transition year groups - Schools would be open to focus on specific year groups who are about to make a key transition in learning. This would include years 6, and either 10 and 12 or 11 and 13, but could also include nursery into reception, years 2 or 9.
3. End of cycle learners – as above, but schools would focus on years 11 and 13 as well as year 6.
4. All learners at a reduced time - Schools would be open for all learners who would attend for a limited time, depending on maximum safe capacity. This could translate to all learners attending for one week, over three or four weeks. Staff would similarly rotate.
5. Earlier years - Schools would open for earlier year groups first: Nursery to Year 1.
6. Children of parents who need to leave home to work – this would focus on children whose parents need to leave home to work.
7. Increase emergency provision – working through communications and Local authorities, work to increase take up of provision for children of critical workers and vulnerable children.

Doc 3: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

[Please fill in the table to explain the implications of this advice and which central teams have cleared the advice before its submission. Copying in a team is not sufficient to secure agreement]

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Group Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EPS clearance number is EPS/KW/87/20
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Legal	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Ruth Conway 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

[For most MAs, the mandatory copy recipients can be added automatically by selecting "Mandatory MA cc" from the global address list (GAL).]

[In addition, there will be others with an interest in the subject you are advising on or the decision taken. For example, any other Ministers with a portfolio interest, special

advisers, relevant policy advisers and relevant policy officials, any specialist policy professionals and relevant subject specific lawyers. These should be discussed and agreed with your Deputy Director. **Your Director should be copied into every MA]**

[Deputy Directors should exercise discretion over the scope of the copy recipient list (including mandatory ccs and mailboxes) where the advice contains sensitive material, for example the outcomes of a public appointments process, criminal or other sensitive investigations or high profile inward investment proposals. Please note the Director of Legal Service must be copied in to all MAs irrespective of the MA's contents.]

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