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### GUIDANCE

# Changes to the School Organisation Code in response to the coronavirus outbreak

Advice for schools and local authorities about changes to the School Organisation Code.

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## Description

This guidance is non-statutory and explains the temporary changes to certain requirements of the School Organisation Code and provides guidance for consulting on school organisation proposals during the coronavirus (COVID-19) outbreak.

All other requirements in the School Organisation Code continue to apply.

The Coronavirus Act 2020 provides the Welsh Ministers with powers relating to containing, preventing and managing the spread of coronavirus in schools, other education institutions and childcare settings in Wales. This includes powers to make notices temporarily removing or relaxing statutory provisions.

The School Organisation Code (“the Code”) is made under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013 School (“the 2013 Act”) which requires the Welsh Ministers issue a code that may impose requirements and include guidance in respect of school organisation proposals on the following (known in the Code as “relevant bodies”):

- The Welsh Ministers
- Local authorities
- The governing bodies of maintained schools
- The promoters of proposals to establish voluntary schools

Since 20 March 2020, schools have remained open for vulnerable children and children of critical workers only. Due to the low numbers of children attending local authorities have found it more operationally effective to provide for these children in ‘Hubs’ with around a third of schools in Wales open for this purpose.

Schools are now planning to increase their operations from 29 June 2020 to enable learners to check in, catch up and prepare for the summer and start of the next school year. The number of learners in schools will be limited due to social distancing measures and it is possible that in some schools there will not be sessions for any pupils on some days.

We recognise that where a school is closed now or in the future due to the impact of the coronavirus local authorities and other proposers may be unable to comply with the requirement in the Code to publish consultation documents and statutory notices on a school day of the schools affected and for a specified number of the consultation period or objections period to be school days.

A school day is defined in section 579 of the Education Act 1996 as any day on which at that school there is a school session. A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day.

The Welsh Government has made the [Maintained Schools \(Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020\) \(Wales\) Regulations 2020](#) which add certain provisions in the School Organisation Code to Schedule 17 of the Coronavirus Act. We have made a [statutory notice](#) which temporarily modifies certain requirements in the Code to allow school organisation proposals to continue in the context of restrictions in place to respond to the Coronavirus pandemic.

Although certain paragraphs of the Code have been temporarily modified the vast majority of requirements in the Code remain appropriate and must still be complied with.

## Consultation

Paragraph 3.4 of the Code (Consultation document) requires that the consultation document must be published on a school day of the school or schools subject to the proposal and consultees must be given at least 42 days to respond to the document, with at least 20 of these being school days. A school day is any day on which there is a school session at the school. A school session can be a morning or afternoon session, so a school day is any day when the school meets for all or part of the day.

We have temporarily modified paragraph 3.4 of the Code. Paragraph 3.4 has effect as if the references to “school day” include a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.

## Consultation with children and young people

Paragraph 3.5 of the Code states that proposers must make suitable arrangements to consult with pupils of any affected school. As a minimum, this must include consultation with the school councils of the affected schools. Governing bodies must help facilitate this aspect of the consultation. Given the current restrictions on gatherings of more than 2 people and social distancing measures, school councils are unlikely to be able to meet.

Whilst proposers would still be required to make suitable arrangements to consult with pupils of any affected school, e.g. by producing and distributing a version of the consultation document appropriate to the age of the children and young people affected, the ability to consult with the School Council ‘as a minimum’ would temporarily not be an option. The duties imposed on the proposer by paragraph 3.5 (consultation with children and young people) are to be treated as discharged if the person has used reasonable endeavours to discharge the duty.

## Publication of statutory proposals

If having considered the consultation report the proposer decides to proceed with the proposal, they must publish a statutory notice and provide a 28 day period in which anyone can object. Paragraph 4.1 of the Code states that the statutory notice must be published on a school day and that the objection period must include 15 school days (in addition to the day on which it is published).

The notice temporarily modifies Paragraph 4.1 of the Code so that it has effect as if the references to “school day” includes a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.

The remaining requirements in the Code continue to apply. For example those bringing forward proposals will still be required to publish a consultation document in hard copy and electronically on their website and make hard copies available on request. They would still be required to advise the ‘statutory consultees’ by letter or email of the availability of the consultation document and that recipient can, if they wish, obtain a hard copy of the consultation document on request.

## Consultation reports

The proposer will still be required to publish a consultation report on their website or that of the relevant local authority at least two weeks prior to the publication of the statutory notice and make hard copies available on request before any proposal is published. Proposers will still be required to ensure that any views expressed in consultations and young people affected by the proposals are highlighted in the consultation report and that it is accessible to them. The proposer will still be required to advise the ‘statutory consultees’ by letter or email of the availability of the consultation report.

## Statutory notices

Proposers will still be required to publish their proposal on their website or that of the local authority by way of statutory notice and provide 28 days for anyone to raise an objection. They would still be required to send the ‘statutory consultees’ either a hard copy of the statutory notice on the day it is published or email them a link to the relevant website. They would still be required to provide schools subject of the proposals with copies of the notice to distribute to pupils, parents carers and guardians, and staff members by email.

## Objection Reports

Proposers will still be required publish the objection report and their response on their website and make hard copies available on request and advise statutory consultees by letter or email of the availability of the Objection Report.

## Decision notification

Decisions (in relation to proposals which require approval or determination) will still be required to be made in writing and set out clearly the reasons for the decision. Decisions will still be required to be published electronically on the proposer’s website (if it has one) and that of the relevant local authority (if different). The proposer will still be required to advise ‘statutory consultees’ by letter or email of the availability of the decision notification.

## Duration of the notice

Notices made under the 2020 Act may only apply for a specified period of time, which must not exceed one month. Welsh Ministers may cancel a notice by issuing a cancellation notice, which may contain transitional or saving provisions. The expiry of the one month period or cancellation of a notice does not prevent the making of a further notice in relation to any provision.

This notice is effective from 26 June and will be reviewed on a monthly basis.

The Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020 make transitional provision so that the above modifications continue to apply after the notice expires in respect for consultation where a consultation or objection period is open at any time during the period specified in the notice.

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