

18 Chwefror 2022

Annwyl

**Cwyn mewn perthynas â Chais am Wybodaeth - ATISN 15710 Addasiadau i'r Cod Trefniadaeth Ysgolion**

Diolch am eich e-bost ar 23 Rhagfyr yn gofyn am adolygiad mewnol o'r wybodaeth a roddwyd i chi mewn perthynas â'r cais uchod am wybodaeth.

Roedd eich cais rhyddid gwybodaeth yn gofyn am y canlynol:

- 1) Gwybodaeth, gan gynnwys unrhyw ohebiaeth a thrafodaethau gyda'r sector addysg ynghylch y penderfyniad i newid paragraff 7(5)(b) o Atodlen 17 i Ddeddf y Coronafeirws 2020 drwy ychwanegu'r Cod Trefniadaeth Ysgolion i'r rhestr o ddeddfiadau ac i ddyroddi Hysbysiadau i Addasu'r Cod Trefniadaeth Ysgolion (Cymru) yn 2020 a 2021.
- 2) Manylion yr ystyriaeth a roddwyd i ddefnyddio'r dull gweithredu statudol i adolygu'r Cod Trefniadaeth Ysgolion a geir yn Neddf Safonau a Threfniadaeth Ysgolion (Cymru) 2013, gan gynnwys unrhyw ohebiaeth neu drafodaeth berthnasol a fu (cyn neu wedi'r penderfyniad dan sylw) rhwng Llywodraeth Cymru ac Awdurdodau Addysg, cyrff llywodraethol ysgolion, undebau llafur, cyrff sy'n cynrychioli rhieni a disgyblion ac Estyn.

Yn dilyn hyn, rydych wedi gofyn a yw'n gywir nad oes unrhyw wybodaeth wedi'i chofnodi gan Lywodraeth Cymru am yr ymgysylltu a'r trafodaethau y cyfeirir atynt yn yr adran o'r memorandwm esboniadol i Reoliadau Ysgolion a Gynhelir (Diwygio Paragraff 7 o Atodlen 17 i Ddeddf Coronafeirws 2020) (Cymru) 2020. Fel y nodwyd yn fy ymateb gwreiddiol ar 23 Rhagfyr, nid oes unrhyw wybodaeth wedi'i chofnodi mewn perthynas â rhan (1) o'ch cais.

Rydych hefyd yn tynnu sylw at y ffaith nad yw fy ymateb yn ymdrin ag unrhyw ystyriaeth fewnol a roddwyd gan Weinidog y Gymraeg ac Addysg neu wasanaeth sifil y Llywodraeth i'r materion a grybwyllir yn eich cais rhyddid gwybodaeth. Ymddiheuraf am y dehongliad o gwmpas eich cais gan fod fy ymateb wedi'i gyfyngu i drafodaethau gyda'r sector addysg yn unig. Gallaf gadarnhau bod swyddogion Llywodraeth Cymru wedi rhoi cyngor i Weinidogion yn ymwneud â'r materion yr ydych wedi'u codi yn ystod y cyfnod hwn. Mae'r wybodaeth berthnasol yn y cyngor hwn i Weinidogion wedi'i chynnwys fel Atodiad i'r llythyr hwn.

O ran ail ran eich cais, mae Deddf Coronafeirws 2020 yn rhoi pwerau brys i'r Llywodraeth ymateb i'r pandemig. Mae hyn yn cynnwys pwerau yn Adran 38 ac Atodlen 17 i roi hysbysiadau sy'n datgymhwyso deddfiadau penodol dros dro. Roedd yn briodol defnyddio'r pwerau hyn ac roedd eu defnydd yn addas o dan yr amgylchiadau.

Os ydych dal yn anfodlon â'r ymateb hwn, mae gennych hefyd yr hawl i gwyno wrth y Comisiynydd Gwybodaeth yn:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Ffôn: 01625 545 745  
Ffacs: 01625 524 510  
E-bost: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

Hefyd, os ydych yn credu bod camweinyddu wedi bod wrth ddelio â'ch cais, mae gennych yr opsiwn i wneud cwyn i Ombwdsmon Gwasanaethau Cyhoeddus Cymru y gellir cysylltu ag ef yn:

Ombwdsmon Gwasanaethau Cyhoeddus Cymru  
1 Ffordd yr Hen Gae  
Pencoed  
Pen-y-bont ar Ogwr  
CF35 5LJ

Ffôn: 0845 6010987 (cyfradd leol)  
E-bost: [holwch@ombwdsmon.cymru](mailto:holwch@ombwdsmon.cymru)

Yn gywir

Paul Jones  
Yr Is-adran Effeithiolrwydd Ysgolion  
Y Gyfarwyddiaeth Addysg

## Annex 1

### Information included in advice submitted to Ministers in relation to ATISN 15710 School Organisation Code Modification

Where information in advice to Ministers has been repeated in subsequent advice to Ministers, this has not been duplicated within this Annex. All recommendations within the advice to Ministers were approved by Ministers.

#### Advice of 24 April 2020 (Ref - MA/P/JM/1092/20)

##### Recommendation

The Deputy Minister for Health and Social Services, the Minister for Education and the Minister for Health and Social Services are asked to agree in principle that:

- notices are drafted to allow the temporary disapplication /modification of statutory provisions/requirements in Childcare and Education legislation in response to Covid-19.
- those notices are drafted based on the draft policy instructions set out in docs 1, 2, 3 and 4.
- Regulations are drafted to add further enactments to those included in Schedule 17 relating to children, education or training in accordance with the instructions set out in doc 4 (education only).

##### Advice

Officials have reviewed the legislation within which both childcare and education provision operates within Wales. This has resulted in the identification of a number of pieces of legislation which we feel need to be either disapplied or modified in the short term to support the safe provision for children in schools and childcare settings during the coronavirus pandemic and to remove burdens from local authorities and schools by temporarily disapplying or relaxing requirements which they are unable to meet due to the impact of the coronavirus pandemic.

Ministers are advised to agree the draft policy instructions at documents 1, 2, 3, 4 and 5 which set out:

- c. Requirements that are not already listed in Schedule 17 to the 2020 Act and therefore require Welsh Ministers to make regulations adding them to the areas where notices can be made, prior to such a notice being made. The requirements we propose to add to Schedule 17 so that we can make notices in respect of them are set out in Doc 4 (and relate to education only).

##### Doc 4

<b>Statutory Instrument including specific section</b>	<b>Do you wish to be able to disapply or modify requirement? If</b>	<b>Explanation of Policy Rationale to Relax Requirements</b>
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	<b>modification please explain what required</b>	
<p>Paragraphs 3.4, 3.5 and 4.1 of the School Organisation Code made under section 38 of the School Standards and Organisation (Wales) Act 2013</p>	<p>Make the requirement that a consultation be published on a school day and for at least 20 of the 42 consultation day period to be school days a best endeavours duty. Similarly make the requirement for 15 of the 28 day objection period once a statutory notice is published to be school days.</p> <p>Disapply the requirement to consult the school councils of schools affected.</p> <p>We wish the amendments to last until the end of the year.</p>	<p>If a school is closed completely (either now or in the future) this could have the effect of completely suspending school organisation proposals until schools affected re-opened. This could have a knock on effect as LAs may be unable to proceed with urgent 21<sup>st</sup> Century School building projects and in some cases impact on plans to increase Welsh Medium provision.</p> <p>For example without the disapplication proposers that have consulted on proposals and decided to proceed by publishing a statutory notice will be unable to proceed for the period that schools are closed.</p> <p>While schools are closed it will be difficult to convene school councils safely so we suggest disapplying the requirement to consult the school councils of schools affected. However, proposers will still be required to make suitable arrangements to consult with pupils of any affected school this should provide a sufficient safeguard.</p> <p>Local authorities and other proposers will still be requirement to notify statutory consultees including LAs, schools and parents of the commencement of consultation and objection</p>

		periods etc. and to make arrangements to consult with children and young people.
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## **Advice of 29 May 2020 (Ref – MA/KW/1431/20)**

### Recommendation

The Minister for Education is asked to:

- Agree, by Regulations, to amend the table in paragraph 7(6) of Schedule 17 of the Coronavirus Act 2020 so as to add a further enactment relating to the School Organisation Code.
- To agree to the drafting and issuing of a notice under Section 38 of and Schedule 17 to the 2020 Act to temporary modify certain requirements in the School Organisation Code as a response to the Covid-19 pandemic.
- Delegate to officials the authority to make two further notices of one month each, after which officials will formally review the modification and return to Ministers with further and updated advice.

### Background

MA/JM/1092/20 secured your agreement in principle to, by made affirmative Regulations, add further enactments to the table in paragraph 7(6) of Schedule 17 of the 2020 Act and to the issuing of notices to enable the temporary disapplication and/or modification of certain statutory provisions in respect of education and childcare provision in Wales. This included your agreement in principle to add a further enactment relating to the School Organisation Code.

### Issue

Since 20 March, 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.

Local authorities have raised concerns that in the current context of around two thirds of all schools being closed, they are unable to comply with the requirement in the Code to publish consultation documents and statutory notices on a school day of the school(s) subject to the proposal, and for 20 of the 42-day consultation period and 15 of the 28-day objection period to be school days.

As of 23 March, five local authorities had completed consultations and were awaiting their Cabinet's decision on whether to proceed with those proposals by publishing statutory notices. These authorities would be unable to meet the requirement for 15 of the 28-day objection period to be school days. Another four local authorities had commenced consultation on a school day, but were unable to include the specified

number of school days. Other local authorities had planned to commence consultation on a statutory proposal, but are unable to proceed as they are unable to commence consultation on a school day as the schools subject to the proposal are currently closed. Whilst the local authorities above have put their proposals on hold there is uncertainty as to when they will be able to proceed with these proposals.

The closure of schools now or in the future in response to Covid-19 could result in the suspension of all school organisation proposals. This could have a knock-on effect for 21<sup>st</sup> Century Schools funding and local authority planning including in respect of their Welsh Education Strategic Plans and Welsh Government's targets to increase use of the Welsh language where the proposal involves the opening of a Welsh medium School.

### Proposed temporary modifications to the Code

Subject to the Minister's agreement we propose to temporarily modify **paragraph 3.4** of the Code to make it a best endeavours duty for proposers to publish a consultation on a school day of the schools affected and for at least 20 of the 42-day consultation period to be school days. We also propose to modify **Paragraph 3.5 of the Code** which refers to consultation with the school council. Whilst proposers would still be required to make suitable arrangements to consult with pupils of any affected school, 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. In addition we propose to temporarily modify **paragraph 4.1** of the Code so that the requirement for the statutory notice to be published on a school day of the school affected and for 15 of the 28-day objection period to be school days is a best endeavours duty.

The remaining requirements in the Code would 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.

### The appropriate and proportionate test

In making a notice under their powers in the 2020Act, the Welsh Ministers need to set out the reasons why it is considered that the modification/ disapplication is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

We consider that the giving of a notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus for the following reasons:

- Since 20 March 2020, schools have remained open for vulnerable children and young people and children of critical workers only in order to reduce the spread of coronavirus. Children not in those groups are to remain out of school.
- There is some doubt on the use of the term "school day" and/or whether the school organisation proposals could go ahead in the absence of the

Regulations being made and notice being issued modifying the requirements in the Code, given that two thirds of schools are not open.

- The closure of schools now or in the future could suspend all school organisation proposals, impacting on the 21st Century Schools programme and leading to a delay in the start of urgent construction projects such as the rebuilding of schools.
- The suspension of school organisation proposals could impact on local authority plans in their WESPs and Welsh Government targets for Welsh Language if the local authorities are unable to comply with the requirement in the Code to commence consultation and objection periods on a school day and include a specified number of school days within those periods.
- The remainder of the requirements in the Code would continue to apply. The Code sets a high standard for consultation ensuring all those with an interest have an opportunity to express their views and have those views taken into account.
- Officials have engaged with relevant local authority leads on the issue of a temporary modification of the Code and they have confirmed that this modification would be seen by them as a welcome intervention at this point in time.

### **Advice of 23 June 2020 (Ref - MA/KW/2004/20)**

#### Recommendation

You are asked to agree:

- To make the Regulations (at **Doc 1**, which will be submitted subsequent to this advice by the Legislative Codes Office) and to lay them and their accompanying Explanatory Memorandum (at **Doc 2**) before the Senedd, in order to amend paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 so as to add a further enactment that can be modified relating to the School Organisation Code, noting that they also cover the temporary disapplication of the Changing of School Session Times (Wales) Regulations 2009 (see MA/KW/1694/20), by the Welsh Ministers for a period specified by notice. The Regulations will come into force at 12pm on Thursday 25 June.
- To approve the notice at **Doc 3**, and sign after 12pm on Thursday 25 June. To agree that the notice is signed and issued later in the day after the regulations have come into force, Legislative Codes Office will provide the notice for signing on 25 June. This notice will for a one month period disapply certain sections of the School Organisation Code as laid out in MA/KW/1431/20.

#### Background

MA/KW/1431/20 secured your agreement to add new entries to Schedule 17 to the 2020 Act for provisions of the School Organisation Code and to draft a notice modifying certain requirements of the Code. This included modifications to paragraph 3.4 and 4.1 of the Code to make it a best endeavours duty for proposers to publish a consultation/statutory notice on a school day of the schools affected and for at least 20 of the 42-day consultation period and 15 of the 28 day objection period to be school days. In addition it secured your agreement to modify Paragraph 3.5 of the Code regarding consultation with children and young people.

After further consideration, rather than a best endeavours duty in relation to the laying of the consultation document and the objection period it was thought more appropriate that the regulations (at **Doc 1**) added additional enactments to the modification table so that a note issued could temporarily amend paragraph 3.4 of the Code (consultation document) 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.

The regulations also provide for a modification such that a note can temporarily amend paragraph 3.5 (consultation with children and young people). Any duty imposed on a person by paragraph 3.5 is to be treated as discharged if the if the person has used reasonable endeavours to discharge the duty.

#### The appropriate and proportionate test

The reasons why this is considered to be an appropriate and proportionate action regarding the basic curriculum and related provisions, in all the circumstances relating to the incidence or transmission of coronavirus are set out in MA/KW/1431/20.

#### **Advice of 10 July 2020 for Plenary debate (Ref - MA/KW/2136/20)**

##### Doc 2

Before proposals are published they must be subject to consultation. The Code 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, 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.

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).

Unless the definition of “school day” in the relevant provisions in the Code is modified the current arrangements for the operation of schools may have the effect of disrupting the progress of school organisation proposals.



The Code also requires that proposers must make suitable arrangements to consult with pupils of any affected school including a minimum requirement to consult with the school councils of the affected schools. However, the limited number of pupils in schools at any one time and social distancing measures will make it difficult for school councils to meet.

The notice temporarily modifies section 3.4 of the Code in respect of the consultation document and section 4.1 of the Code in respect of manner of publication of the statutory notice 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. The duties imposed on a person 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.

In respect of paragraph 3.5 of the Code which refers to consultation with children and young people whilst proposers are still required to make suitable arrangements to consult with pupils of any affected school, the ability to consult with the School Council ‘as a minimum’ may not be an option. The duties imposed on a person 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.

The remaining requirements in the Code continue to apply. Local authorities and other proposers will still be required to notify statutory consultees including local authorities, schools and parents of the commencement of consultation, objection periods and other relevant matters and to make arrangements to consult with children and young people as best they can.

## **Advice of 6 January 2021 (Ref - MA/KW/0013/21)**

### Recommendation

The Minister is asked to:

- Agree to officials instructing Legal Services to make a new notice temporarily disapplying certain requirements of the School Organisation Code, to come into force on 8 January 2021.
- Note that the reason for this action is to respond to the continuing coronavirus pandemic.

### Background

MA/KW/1431/20 secured your agreement to add new entries to Schedule 17 to the 2020 Act for provisions of the School Organisation Code and to draft a notice modifying certain requirements of the Code. MA/KW/2004/20 secured your agreement to issue the first notice which had effect for a period of one month from 25 June 2020.

This advice seeks your approval to issue a similar second notice to come into force from 8 January until 31 January 2021.

### The appropriate and proportionate test

In making a notice under their powers in the 2020 Act, the Welsh Ministers need to set out the reasons why it is considered that the modification/ disapplication is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

We consider that the giving of a notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus for the following reasons:

- You announced on 4 January 2021 that schools would remain open for vulnerable children and young people and children of critical workers only in order to reduce the spread of coronavirus. Children not in those groups are to remain out of school until 18 January.
- School organisation proposals may be open to challenge as consultation documents and statutory notices cannot be published on a “school day” of the school or schools subject to the proposal in the absence of a second notice being issued modifying the requirements in the Code, given that some schools may not have any pupils attending the premises.
- The closure of schools - in terms of normal “school days” as defined in legislation - now or in the future could suspend all school organisation proposals, impacting on the 21st Century Schools programme and leading to a delay in the start of urgent construction projects such as the rebuilding of schools.
- The suspension of school organisation proposals could impact on local authority plans in their WESPs and Welsh Government targets for Welsh Language if the local authorities are unable to comply with the requirement in the Code to commence consultation and objection periods on a school day and include a specified number of school days within those periods.
- The remainder of the requirements in the Code would continue to apply. The Code sets a high standard for consultation ensuring all those with an interest have an opportunity to express their views and have those views taken into account.
- Officials have engaged with relevant local authority leads on the issue of a temporary modification of the Code and they have confirmed that this modification would be seen by them as a welcome intervention at this point in time. We are aware of at least five proposals which will have to be delayed and could lapse if we do not issue a second notice.

**Advice of 26 January 2021 (Ref - MA/KW/0217/21)**

Recommendation

The Minister is asked to agree to:

- note that information will be supplied with regards to issuing a further notice to modify certain statutory requirements in the School Organisation Code (this would be the third such notice) in due course

### **Advice of 8 February 2021 (Ref – MA/KW/0497/21)**

#### Recommendation

The Minister is asked to:

- Agree to officials instructing Legal Services to make a new notice temporarily disapplying certain requirements of the School Organisation Code, to come into force on 12 February 2021.
- Agree to publish guidance to accompany the notice setting out the temporary changes to the Code. ([Doc 1](#)).
- Agree to officials issuing non-statutory guidance at ([Doc 2](#)) setting out the Welsh Government's expectations of consultation during coronavirus restrictions.
- Note that the reason for this action is to respond to the continuing coronavirus pandemic.

#### Background

Following your announcement on 4 January 2021 that school premises would remain open for vulnerable children and young people and children of critical workers only in order to reduce the spread of coronavirus, MA/KW/0013/21 secured your agreement to issue a second notice which expired on 31 January 2021.

This submission seeks your approval to issue a third notice to come into force from 12 February until 28 February 2021 and to issue accompanying guidance on the changes to the Code. This submission also seeks your agreement to issue the additional good practice guidance to assist proposers in undertaking consultations during the pandemic.

#### The appropriate and proportionate test

In making a notice under their powers in the 2020 Act, the Welsh Ministers need to set out the reasons why it is considered that the modification/ disapplication is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

We consider that the giving of a notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus for the following reasons:

- You announced on 4 January 2021 that school premises would remain open for vulnerable children and young people and children of critical workers only in order to reduce the spread of coronavirus. Children not in those groups are not allowed to access school premises until further announcements are made as to how the public health situation will allow restrictions to be eased.
- The First Minister announced on 29 January 2021 that the premises of primary schools may start to re-open to younger learners, should a fall in case numbers allow it, from 22 February (following the half term break).
- You announced on 5 February that pupils aged between three and seven in the foundation phase will return to the classroom on 22 February following the half-term break.
- School organisation proposals may be open to challenge as consultation documents and statutory notices cannot be published on a “school day” of the school or schools subject to the proposal in the absence of a third notice being issued modifying the requirements in the Code, given that some schools may not have any pupils attending the premises nor been able to provide any remote learning either.
- We recognise that some local authorities might take the view that “school days” are not occurring during lockdown (notwithstanding the remote learning being provided). In the absence of a Notice, those local authorities could suspend their proposals, impacting on the 21<sup>st</sup> Century Schools programme and leading to a delay in the start of urgent construction projects such as the rebuilding of schools.
- The suspension of school organisation proposals could impact on local authority plans in their Welsh in Education Strategic Plans (WESPs) and Welsh Government targets for Welsh Language if the local authorities are unable to comply with the requirement in the Code to commence consultation and objection periods on a school day and include a specified number of school days within those periods.
- The remainder of the requirements in the Code would continue to apply. The Code sets a high standard for consultation ensuring all those with an interest have an opportunity to express their views and have those views taken into account.
- Officials have engaged with relevant local authority leads on the issue of a temporary modification of the Code and they have confirmed that this modification would be seen by them as a welcome intervention at this point in time. We are aware of at least five proposals which local authorities are likely to delay and could lapse if we do not issue a third notice due to their nervousness in proceeding without the clarity that the notice affords them.

## **Advice of 24 February 2021 (Ref – MA/KW/0750/21)**

### Summary

Using powers under the Coronavirus Act 2020, four notices modifying or disapplying certain education requirements were issued for the month of February 2021. The Minister is asked to agree the issuing of four further notices temporarily modifying or disapplying the following requirements for the month of March 2021:

- Modify certain requirements of the School Organisation Code (this would be the fourth such notice).

### Recommendation

The Minister is asked to agree to:

- officials instructing Legal Services to draft four new notices as outlined above, each lasting for a one month period.

### School Organisation Code

MA/KW/1431/20 secured your agreement to add new entries to Schedule 17 to the 2020 Act for provisions of the School Organisation Code and to draft a notice modifying certain requirements of the Code. MA/KW/2004/20 secured your agreement to issue the first notice which had effect for a period of one month from 25 June 2020.

Since then a further two notices have been issued. The most recent advice which secured your agreement to issue a notice which expires on 28 February was contained in MA/KW/0497/21.

### *Current considerations*

School organisation proposals may be open to challenge as consultation documents and statutory notices cannot be published on a “school day” of the school or schools subject to the proposal in the absence of a third notice being issued modifying the requirements in the Code, given that some schools may not have any pupils attending the premises.

Most schools are meeting every day and providing education on the school premises to certain children, at the same time, providing remote education to other pupils. You have received advice in MA/KW/0497/21 that when some pupils are physically present on site at school this would count as a school day.

However, there may be schools which, because of illness of teachers they are not able to provide education on site for any children at all. In these circumstances, the school will not have met for any sessions and therefore it will be difficult to argue there has been a school day and the notice would assist in these situations.

The notice will modify the requirement in the Code to engage with people and young people to a reasonable endeavours basis. Otherwise this may be problematic while not all pupils are in attendance at school premises. Proposers will still be required to make suitable arrangements to consult with pupils of any affected school.

The remainder of the requirements in the Code would continue to apply. The Code sets a high standard for consultation ensuring all those with an interest have an opportunity to express their views and have those views taken into account.

Officials have engaged with relevant local authority leads on the issue of a temporary modification of the Code and they have confirmed that this modification would be seen by them as a welcome intervention at this point in time.

### *Advice*

The temporary modification to the School Organisation Code is necessary to ensure school organisation proposals can continue during the restrictions. Many proposals are linked and therefore one delayed proposal can lead to planning issues for local authorities. In addition, many proposals involve bids for the 21st Century Schools and Colleges Programme funding.

## **Advice of 24 March 2021 (Ref – MA/KW/1125/21)**

### Summary

Using powers under the Coronavirus Act 2020, four notices modifying or disapplying certain education requirements were issued for the month of March 2021. The Minister is asked to agree the issuing of four further notices temporarily modifying or disapplying the following requirements for the month of April 2021. The first notice detailed below reflects the policy position agreed for assessment arrangements as set out in MA/KW/1109/21:

- Modify certain requirements of the School Organisation Code (this would be the fifth such notice).

### Recommendation

The Minister is asked to agree to:

- officials instructing Legal Services to draft four new notices as outlined above, each lasting for a one month period.

### School Organisation Code

*As set out under MA/KW/0750/21*

## **Advice of 21 April 2021 (Ref – MA/KW/1565/21)**

### Summary

Using powers under the Coronavirus Act 2020, four notices modifying or disapplying certain education requirements were issued for the month of April 2021. The Minister is asked to agree the issuing of four further notices temporarily modifying or disapplying the following requirements for the month of May 2021 (the same as the April notices):

- Modify certain requirements of the School Organisation Code (this would be the sixth such notice).

### School Organisation Code

*As set out under MA/KW/0750/21*

### **Advice of 20 May 2021 (Ref – MA/JMEWL/1667/21)**

#### Recommendation

The Minister is asked to:

- agree to officials instructing Legal Services to draft a new notice temporarily modifying certain requirements of the School Organisation Code, to come into force on 1 June 2021 for one month

#### Background

- Officials are seeking your clearance to proceed with a further notice for the period of 1 – 30 June 2021.

#### The appropriate and proportionate test

It is advised that the making of the notice relating to the modifications to the Code listed above is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

School organisation proposals may be open to challenge - as consultation documents and statutory notices cannot be published on a “school day” of the school or schools subject to the proposal - in the absence of a new notice being issued modifying the requirements in the Code, if some schools are forced to close due to positive coronavirus cases among staff or learners. Legal advice on what constitutes a school day is provided below from paragraph 35.

The notice will modify the requirement in the Code to engage with people and young people to a reasonable endeavours basis. Otherwise this may be problematic if not all pupils are in attendance at school premises. Proposers will still be required to make suitable arrangements to consult with pupils of any affected school.

The remainder of the requirements in the Code would continue to apply. The Code sets a high standard for consultation ensuring all those with an interest have an opportunity to express their views and have those views taken into account.

Officials have engaged with relevant local authority leads on the issue of a temporary modification of the Code and they have confirmed that this modification would be seen by them as a welcome intervention at this point in time.

Non-statutory guidance was issued in February 2021 which sets out Welsh Government’s expectations around consulting on school organisation proposals

during the coronavirus restrictions.

The temporary modification to the School Organisation Code is necessary to ensure school organisation proposals can continue during the restrictions. Many proposals are linked and therefore one delayed proposal can lead to planning issues for local authorities. In addition, many proposals involve bids for the 21st Century Schools and Colleges Programme funding.

## **Advice of 16 June 2021 (Ref – MA/JMEWL/2007/21)**

### Summary

Using powers under the Coronavirus Act 2020, the Minister for Education and the Welsh Language is asked to agree to issue:

- a notice temporarily modifying requirements of the School Organisation Code for the remainder of the school year, expiring on 23 July 2021.

### Recommendation

The Minister is recommended to:

- agree to officials instructing Legal Services to make a new notice temporarily modifying certain requirements of the School Organisation Code, to come into force on 1 June 2021 for one month.

### Current considerations and advice

*As set out under 'The appropriate and proportionate test' of MA/JMEWL/1667/21*