

## **The Health Protection (Coronavirus restrictions) (No. 5) (Wales) (Amendment) Regulations 2021**

### **EQUALITY IMPACT ASSESSMENT**

#### **1. Describe and explain the impact of the proposal on people with protected characteristics as described in the Equality Act 2010.**

This proposal will enable certain groups of learners to return to face-to-face teaching on 22 February 2021.

We fully accept that any change to education arrangements has a wide variety of impacts on different groups. This includes learners, their families as well as those involved in delivering education.

#### **The Equality and Human Rights Commission's report *How coronavirus has affected equality and human rights*, October 2020**

As part of its *Is Britain Fairer?* report series the EHRC reports on how the pandemic has affected different groups. Some of the key findings about school closures and remote learning are outlined below.

*“There is a real danger of a lost ‘COVID generation’ as young people miss out on education and are likely to be hardest hit by job losses.*

*“Differences in support for remote learning during the pandemic threaten to widen inequalities for those who already perform less well than their peers, particularly boys, Black pupils, some Gypsy, Roma and Traveller pupils, pupils who need support in education, and those who are socio-economically disadvantaged.*

*“The response to the coronavirus pandemic has created gaps in the education of most children in Britain. These gaps threaten attainment at primary and secondary level.*

*“Boys continue to perform worse than girls and attainment by children with SEND / ASN / ALN is much lower than those without such needs.*

*“Black pupils have lower attainment levels than other ethnic minority groups although Gypsy, Roma and Traveller pupils continue to have the lowest attainment levels of any ethnic group by a significant amount.*

*“Children eligible for free school meals or from deprived areas perform below the average. These groups are at risk of falling further behind. There are also*

*inequalities in the amount of time spent on home-learning, with some indication that boys are spending less time on home learning than girls.*

*“Research suggests that 20% of pupils on free school meals in the UK had no access to a computer at home, compared with 7% of other children.*

*“In Wales, there are also concerns that pupils attending Welsh language schools who do not have Welsh-speaking parents are not getting sufficient attention.”*

We have identified some specific impacts by protected characteristic and have listed these below.

### **Returning to school buildings**

The trajectory of the virus has been such that shielding will continue until 31 March 2021. We expect that children, young people and staff who are shielding will be asked to continue to do so, unless given advice from a GP or healthcare provider that they can return. All those in the first four priority areas have now received their vaccinations.

For the teaching workforce and classroom assistants, it will be important for school leaders to consider practical options for these members of the workforce as staff and pupils return to school buildings or how these members of staff may best support home learning, and the proportion of their staff this may affect. The impact of these measures should also be considered in the context of staff wellbeing.

To support with educational continuity, whilst allowing for teachers to stay at home where necessary, and ensuring teacher workload doesn't grow, local authorities have been supported to identify additional workforce capacity. This may include:

- Providing financial support through the Hardship Fund
- Ensuring that supply staff are fully utilised
- The £29m Accelerated Learning Programme is helping schools provide extra teaching staff to support learners during COVID-19.

The operational guidance for schools with limited attendance sets out a suite of important mitigations that local authorities and schools will be asked to implement.

These include risk assessments, BAME Toolkit, enhanced cleaning regimes, good hand and respiratory hygiene, ventilation, use of high quality 3 layer face coverings where appropriate, continuous vigilance for symptoms, and surveillance, testing and outbreak management.

For other members of the workforce, including cleaners, catering staff and technicians, similar considerations will need to be taken to ensure staff can return to work safely, with awareness of factors unique to each role taken into consideration.

The operational guidance for schools with limited attendance states that risk assessments should be completed that may consider hygiene, ventilation, staff and pupil movement as well as physical distancing, use high quality 3 layer face coverings where appropriate, continuous vigilance for symptoms, and surveillance, testing and outbreak management.

£5 million has been allocated to support local authorities with the additional costs associated with the phased return of learners including increased ventilation, purchasing face coverings and providing canopies for additional ventilated space and adjustments to school buildings.

## **Disability**

### **Staff with disabilities**

It is likely that a higher number of school/FE staff with physical disabilities will need to take precautions about returning to school/college sites compared to staff without a disability.

For members of staff with additional support needs it will be important for any changes to routine to be clearly communicated.

### **Staff mental wellbeing**

Staff suffering with mental ill health may have found school closures to have a greater negative impact on their wellbeing than their peers. The same group of people may be more likely to be anxious about the phased return of learners. Mental health and wellbeing support is set out in the Operational guidance for schools.

## **Sex**

### **Caring responsibilities**

Women who are teachers are more likely to have been juggling caring responsibilities with supporting home learning whilst working from home or whilst working in school supporting vulnerable learners and children of critical workers. As learners phase back to school staff who are parents or carers will be dependent upon childcare being available to enable them to return to previous working patterns themselves.

Women who are parents or carers, and who make up the wider education workforce for example learning assistants and cleaners are also likely to be dependent upon childcare being available to enable them to return to their contracted working patterns.

### **Women's safety and wellbeing**

There is a risk that there has been an increase in domestic abuse during lockdown. For women impacted by this, a return to the workplace is likely to have a positive impact overall, but support should be available to support these members of staff.

### **Women's health**

At any one time, a proportion of the female education workforce will be dealing with the often debilitating effects of the menopause and other menstrual health issues such as endometriosis. Stress – which we know has increased for some as a result of lockdown - can exacerbate a number of the symptoms associated with these conditions and returning to a repurposed school estate where access to toilets might have changed may be challenging. With workplaces moving towards being 'menopause friendly' schools should consider how they offer support in this context.

### **Gender reassignment**

Transgender members of the workforce may have experienced delays to gender-affirming treatment due to COVID-19, which could have a negative impact on mental health and wellbeing. There is no data available to know how many members of the workforce may be impacted.

### **Pregnancy and maternity**

Pregnant members of the workforce should continue to follow the latest guidance set out in the operational guidance for schools during limited attendance, and employers should conduct risk assessments.

### **Returning to work**

Some members of staff will be returning to the workforce after maternity leave and will not have experienced home learning in the same way as their colleagues.

Experts have warned Covid-19 has had a negative impact on maternal mental health beyond that seen in the general population, where reported rates of anxiety have more than doubled. Consideration should be given to their re-induction to the workforce.

### **Religious spaces**

Our operational guidance states that all available space should be utilised to assist with maintaining social distance from staff and learners. Where rooms are potentially being repurposed, it should be ensured that provision remains available for staff to access religious spaces at expected times of day.

### **Wellbeing**

We recognise that supporting staff wellbeing at a time of increasing school operations is paramount. The All Wales Risk Assessment Tool enables staff to consider both their health and well-being, and understand their personal risk of developing more serious symptoms if they come into contact with the COVID-19 virus as either low, high or very high.

### **Low-income households**

Whilst the closure of schools has caused for some members of staff to be furloughed, which may have decreased their monthly income, it is expected that increasing school / FE operations will allow for those people to return to work and to their previous salary.

**Record of impacts by protected characteristic:**

<b>Protected characteristic or group</b>	<b>What are the positive or negative impacts of the proposal?</b>	<b>Reasons for your decision (including evidence)</b>	<b>How will you mitigate Impacts?</b>
Age	<p>Children and young people may be adversely impacted by a loss of schooling and routine – a full Children’s Rights Impact Assessment (CRIA) has been carried out for the closure of schools in January 2021.</p>	<p>Children and young people are the groups most directly impacted by school and college closures.</p>	<p>We will build on the CRIA developed for the closure of schools in January 2021 for those learners who continue to be taught remotely.</p>
	<p>Working-age adults who are parents may be adversely impacted by the need to provide childcare and extra support to their children while home schooling.</p> <p>Some of these parents will have had to use leave or even seek alternative employment where working from home has not been an option, which in turn could lead to an increase in low income households.</p>	<p>School closures have meant many working parents who are not critical workers have had to make arrangements with their employers to change working patterns and locations.</p>	<p>We continue to use using campaigns, and networks, to distribute information and advice to parents, for example the Parenting. Give it Time campaign which is used to get messages out to parents; the Flying Start Facebook page; and our Parenting Expert Action Group, Childcare, Flying Start and Families First Networks.</p>
	<p>Older, retired people who provide childcare for grandchildren may</p>	<p>Grandparents have been called upon to help with childcare</p>	

	be adversely impacted by the need to provide additional help with childcare and support with home schooling.	and home schooling where working parents have been unable to make alternative arrangements.	
Age	Increasing school/FE operations will require greater numbers of staff to work from school sites. This may include older staff members, who we know are of higher risk of developing more serious symptoms from Covid-19.	Whilst this does enable staff members to re-engage with face-to-face learning with learners, age is known to be a factor in determining risk of developing more serious symptoms from Covid-19.	<p>An All Wales Risk Assessment Tool developed in collaboration with the sector takes age into account and helps the individual and their employer to take additional steps to mitigate these risks. This is over and above the mitigating measures introduced for learners, staff and others on school sites.</p> <p>The risk assessment tool will have both immediate and long term implications for those individuals who assess their personal risk factors. In the longer term, some people who may have been in harm's way will have been protected from severe COVID-19 infection or possibility of death. In addition to the immediate action taken, in the longer term individuals will be able to identify and understand lifestyle</p>

			improvements that if actioned may have longer term effects on their health and wellbeing.
Disability	Children and young people with disabilities and additional or special learning needs may be more adversely impacted by not attending school or college.	Vulnerable learners are identified by educational providers or local authorities (including children's social care services), as those who could benefit from continued full-time attendance at school or college.	Children and young people who are identified as vulnerable or who have a statement of SEN may still attend their usual school or college as normal. This exception is stipulated in the Regulations.
	Parents and carers with disabilities may be disproportionately adversely impacted by the need to provide additional childcare and support during school closures.	Physical disabilities and learning disabilities may affect a parent's ability to perform the role of both care giver and educator on a full-time basis, even for a short timeframe.	This mitigates some impacts of not having access to the usual equipment and support from school or college, but cannot fully address issues that arise from reduced social interactions and possibly changes to routine.
	Increasing school/FE operations will require greater numbers of staff to work from school sites. This may include staff with disabilities.	It is likely that a higher number of school staff with physical disabilities will need to take precautions about returning to school compared to school staff without a disability.	Through our operational guidance we emphasise that that staff should talk to their employers about how they will be supported. This will be particularly important where staff members are now required to return to face-to-face learning.



Gender Reassignment	None.		
Pregnancy and maternity	<p>Pregnant women and those with very young children as well as older children who attend school or college may be adversely impacted by the need to provide extra childcare and support for home schooling.</p> <p>Those who have become unpaid carers are more likely to be women, younger and have young children. They have faced competing demands, which have challenged their physical and mental health and wellbeing and placed additional strain on their relationships, finances and ability to do paid work.</p>	EHRC report: <i>How coronavirus has affected equality and human rights</i> , October 2020	We are using campaigns, and networks, to distribute information and advice to parents, for example the Parenting. Give it Time campaign which is used to get messages out to parents; the Flying Start Facebook page; and our Parenting Expert Action Group, Childcare, Flying Start and Families First Networks.
	Increasing school/FE operations will require greater numbers of staff to work from school sites. This may include staff who are pregnant.	Pregnant women are in the people at increased risk category and are generally advised to follow the above advice, which applies to all staff in schools and the advice to general public but in doing so be aware	We have noted in our operational guidance that that pregnant staff and their employers should follow the advice in the COVID-19: advice for pregnant employees. This is alongside the

		that they are at increased risk	All Wales Risk Assessment Tool.
Race	Some learners from ethnic minorities, including Gypsy, Roma and Traveller pupils may be adversely impacted by remote learning, particularly in accessing technology.	EHRC report: <i>How coronavirus has affected equality and human rights</i> , October 2020	<p>As part of the 'Stay Safe. Stay Learning' programme, the Welsh Government is working with local authorities to support digitally excluded learners.</p> <p>An additional £3m was made available to support these learners in 2020.</p> <p>In addition, schools and settings are encouraged to have a range of communication channels in place for parents/ carers, including non-digital options for those parents/carers without access to technology.</p>
	Increasing school/FE operations will require greater numbers of staff to work from school sites. This may include Black, Asian and minority ethnic people, who we know are of higher risk of developing more serious symptoms from Covid-19.	Whilst this proposal does enable staff members to re-engage with face-to-face learning with learners, ethnicity is known to be a factor in determining risk of developing more serious symptoms from Covid-19.	An All Wales Risk Assessment Tool developed in collaboration with the sector takes age into account and helps the individual and their employer to take additional steps to mitigate these risks. This is over and above the mitigating measures introduced

			<p>for learners, staff and others on school sites.</p> <p>The risk assessment tool will have both immediate and long term implications for those individuals who assess their personal risk factors. In the longer term, some people who may have been in harm's way will have been protected from severe COVID-19 infection or possibility of death. In addition to the immediate action taken, in the longer term individuals will be able to identify and understand lifestyle improvements that if actioned may have longer term effects on their health and wellbeing.</p>
<p>Religion, belief and non-belief</p>	<p>Children and young people who attend a school or college with a religious character may be adversely affected by the closures if school or college represents their only access to collective worship or other teachings important to those individuals.</p>	<p>School or college may represent the only opportunity for some children and young people to practice religious observance with their peers.</p>	<p>Through Hwb, the digital learning platform for Wales, learners and practitioners from maintained schools have access to a range of online learning tools.</p> <p>Video conferencing can provide an interactive experience and an opportunity to collaborate and</p>

			engage in religious observance through school or college in a safe and accessible way.
Sex / Gender	Women are more likely to carry the burden of additional childcare and home schooling, even if they are in employment, than their male partners.	EHRC report: <i>How coronavirus has affected equality and human rights</i> , October 2020	We are using campaigns, and networks, to distribute information and advice to parents, for example the Parenting. Give it Time campaign which is used to get messages out to parents; the Flying Start Facebook page; and our Parenting Expert Action Group, Childcare, Flying Start and Families First Networks.
	Increasing school operations will require greater numbers of staff to work from school sites. This may include men, who we know are of higher risk of developing more serious symptoms from Covid-19.	Whilst this does enable staff members to re-engage with face-to-face learning with learners, age is known to be a factor in determining risk of developing more serious symptoms from Covid-19.	An All Wales Risk Assessment Tool developed in collaboration with the sector takes age into account and helps the individual and their employer to take additional steps to mitigate these risks. This is over and above the mitigating measures introduced

			<p>for learners, staff and others on school sites.</p> <p>The risk assessment tool will have both immediate and long term implications for those individuals who assess their personal risk factors. In the longer term, some people who may have been in harm's way will have been protected from severe COVID-19 infection or possibility of death. In addition to the immediate action taken, in the longer term individuals will be able to identify and understand lifestyle improvements that if actioned may have longer term effects on their health and wellbeing.</p>
Sexual orientation	None.		
Marriage and civil partnership	None.		
Children and young people up to the age of 18	A full Children's Rights Impact Assessment (CRIA) for closure of schools in January has been carried out separately.	Children and young people are the groups most directly impacted by school and college closures.	We will build on the issues identified in the CRIA A full CRIA is available separately.

Low-income households	Learners from low income household may be disproportionately adversely impacted by school and college closures where they have limited access to digital devices and the internet.	National Survey for Wales, 2018-19 <i>Internet use and digital skills</i>	As part of the ‘Stay Safe. Stay Learning’ programme, the Welsh Government is working with local authorities to support digitally excluded learners.  An additional £3m was made available to support these learners in 2020.  In addition, schools and settings continue to be encouraged to have a range of communication channels in place for parents/ carers, including non-digital options for those parents/carers without access to technology for this period when some learners will remain being taught remotely, whilst others will return to school.
	Parents from low income households may lack the intellectual resources to support their children through home schooling.		Through Hwb, the digital learning platform for Wales, learners and practitioners from maintained schools have access to a range of online learning tools. Using applications through Hwb can provide an interactive experience

			and an opportunity to collaborate and engage in a safe and accessible way.
	Learners eligible for free school meals provision may be adversely impacted by school closures.	Some families are reliant on the provision of free school meals for their children's nutrition and health needs.	Local authorities are reminded that legal duties with regard to the provision of free school meals still apply throughout school closures.  Additionally, when making arrangements for providing eligible learners with free school meals, school governing bodies and local authorities must take reasonable steps to ensure that a learner cannot be identified by any person, other than a person authorised under legislation, as a learner who receives a free school lunch.

## **European Convention on Human Rights**

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Welsh Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.