

*These notes refer to the Curriculum and Assessment (Wales) Act 2021 (asc 4) (c.4) which received Royal Assent on 29 April 2021*

# **CURRICULUM AND ASSESSMENT (WALES) ACT 2021 (ASC 4)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Curriculum in Maintained Schools, Maintained Nursery Schools and Funded Non-Maintained Nursery Education**

##### ***Chapter 4 – Curriculum Implementation: Exceptions***

##### ***Section 37 - Introduction***

74. **Section 37** explains that Chapter 4 sets out exceptions to the curriculum implementation duties in Chapter 3.

##### ***Section 38 – Development work and experiments***

75. This section enables the Welsh Ministers to give a direction to schools and funded non-maintained nurseries in order to enable them to participate in development work or experiments.
76. A direction given under this section may modify or disapply some or all of the curriculum implementation duties in sections 27, 28, 29 and 30 (in relation to schools) and sections 34, 35 and 36 (in relation to funded non-maintained nurseries) for a period specified in the direction, so that the development work or experiment can take place. A direction could therefore be used, for example, to allow schools to take part in a pilot for a proposed new area of learning and experience.

##### ***Section 39 – Development work and experiments: conditions***

77. This section specifies conditions that must be met in order for the Welsh Ministers to give a direction under section 38.
78. The condition specified in subsection (2) is intended to ensure that pupils or children affected by the direction continue to receive a suitable curriculum.

##### ***Section 40 - Development work and experiments: supplementary***

79. This section sets out supplementary requirements in relation to directions given under section 38.
80. Where a direction is given in relation to a school, or in relation to FNNE, subsections (4) and (5) require the head teacher and governing body of the school, or the provider of the FNNE, to publish a summary of the curriculum that will be implemented as a result of the direction. These subsections also modify the duties imposed by sections 12 and 16 in respect of review and revision of an adopted curriculum, so that they apply only to the extent that is compatible with the direction.

***Section 41 – Pupil and children with additional learning needs***

81. This section allows the curriculum implementation duties in Chapter 3 to be disapplied or modified in relation to pupils or children with additional learning needs (“ALN”).
82. Subsection (1) allows individual Development Plans (“IDPs”) prepared for a pupil or child under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 to include provision that disapplies or modifies some or all of the curriculum implementation duties in Chapter 3. Such plans are prepared by local authorities in Wales.
83. Subsection (2) allows Education, Health and Care Plans (“EHCs”) prepared for a pupil or child under the Children and Families Act 2014 to include similar provision. EHC plans are prepared by local authorities in England, but they may need to include provision of this kind if a pupil or child who is ordinarily resident in England attends an educational setting in Wales.
84. Subsection (3) places a restriction on local authorities’ powers to disapply or modify curriculum implementation duties by means of provision included in IDPs or EHCs. It only allows IDPs or EHC to include provision of this kind if the conditions in that subsection are satisfied. These conditions aim to ensure that the pupils and children whose IDPs or EHCs include such provision will continue to receive a suitable curriculum.
85. Subsection (4) allows the Welsh Ministers to make regulations specifying further conditions that must be satisfied before an IDP or EHC may include provision of the kind mentioned in subsections (1) and (2).

***Section 42 – Temporary exceptions for individual pupils and children***

86. This section enables the Welsh Ministers to make regulations allowing the head teacher of a maintained school or maintained nursery school to determine that some or all of the curriculum implementation duties in Chapter 3 are to be temporarily disapplied or modified in relation to an individual pupil.
87. It also enables the Welsh Ministers to make regulations allowing an FNNE provider to determine that some or all of the curriculum implementation duties in Chapter 3 are to be temporarily disapplied or modified in relation to an individual child.
88. The regulations must provide that a person may make a determination only if the person is satisfied that the curriculum that will be provided for the pupil or child will comply with the requirements in subsection (3). These requirements are intended to ensure that the curriculum that will be provided will be a suitable one.
89. Subsection (4) enables the Welsh Ministers to specify, by regulations, further conditions that must be met before a determination may be made.

***Section 43 – Temporary exceptions for individual pupils and children: supplementary***

90. This section makes further provision about regulations under section 42.
91. Subsection (2) provides that such regulations must not allow a determination to be made on the grounds that a pupil or child has, or may have, additional learning needs. If any curriculum implementation duties are to be disapplied or modified on the grounds of a pupil or child’s additional learning needs, the appropriate course of action is to include provision to that effect in the individual development plans or EHC (see section 41).
92. Subsection (3) requires the regulations to ensure that the operative period of a determination does not exceed 6 months. However, the regulations may allow consecutive determinations to have a combined operative period of more than 6 months.

#### ***Section 44 – Provision of information about temporary exceptions***

93. This section sets out the information that must be provided by a head teacher or FNNE provider who makes, varies or revokes a determination under regulations made under section 42. It also lists the persons to whom that information must be provided.
94. A head teacher must provide the information set out in subsection (3) (and, if appropriate, the information set out in subsection (4)) to the pupil to whom the determination relates, the pupil's parent, the governing body of the school, and the local authority that maintains the school. However, subsection (5) disappplies the duty to supply information to the pupil where the head teacher considers that the pupil lacks capacity to understand the information, or what it means to exercise the right of appeal conferred by section 45.
95. A FNNE provider must provide the information set out in subsection (3) (and, if appropriate, the information set out in subsection (4)) to the parent of the child to whom the determination relates, and to the local authority that secures that education.

#### ***Section 45 - Appeals about temporary exceptions for individual pupils***

96. This section enables a pupil, or the pupil's parent, to appeal to the school's governing body where the head teacher makes, revokes or varies a determination relating to the pupil under regulations made under section 42. It also allows the pupil, or the pupil's parent, to bring an appeal where they have asked the head teacher to make a determination under those regulations but no determination has been made (for instance, because the head teacher has refused to make the determination or has not responded to the request).
97. However, the pupil may not appeal if the governing body considers that the pupil does not have the capacity to understand what it means to bring an appeal.
98. If an appeal is made, the governing body may confirm the head teacher's decision or direct the head teacher to take the action that it considers appropriate. It must also inform the pupil and the pupil's parent about its decision, unless it considers that the pupil does not have the capacity to understand the information that would be given.
99. The section enables the Welsh Ministers to make further provision, by regulations, in connection with these appeals.

#### ***Section 46 - Appeals about temporary exceptions for individual children***

100. This section enables the parent of a child for whom FNNE is provided to appeal to the local authority that secures the FNNE if the FNNE provider makes, revokes or varies a determination relating to the child under regulations made under section 42. It also allows the child's parent to bring an appeal where they have asked the FNNE provider to make a determination under those regulations but no determination has been made.
101. If an appeal is made, the local authority may confirm the FNNE provider's decision or direct the provider to take the action that it considers appropriate. It must also inform the pupil's parent about its decision.
102. The section enables the Welsh Ministers to make further provision, by regulations, in connection with these appeals.

#### ***Section 47 – Exception for pupils for whom arrangements are made under section 19A of the Education Act 1996***

103. This section makes it clear that the curriculum implementation duties in sections 27, 28, 29 and 30 do not apply to pupils for whom arrangements are made under section 19A of the 1996 Act (pupils receiving EOTAS, including in PRUs).

***Section 48 – Power to make provision for further exceptions***

104. This section enables the Welsh Ministers to make regulations specifying additional cases or circumstances in which some or all of the curriculum implementation duties in sections 27, 28, 29 and 30, or in sections 34, 35 and 36, may be disapplied or modified.
105. Subsection (2) allows the regulations to give a person a discretion to decide whether some or all of the curriculum implementation duties should be disapplied or modified in cases or circumstances specified in the regulations. So the regulations could, for example, allow head teachers to decide whether certain curriculum implementation duties should be disapplied in relation to pupils for whom external provision is commissioned (i.e. provision not provided by the school).