

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)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Chapter 1 - Curriculum Design and Adoption

Section 9 – Introduction and interpretation

18. This section describes the contents of Chapter 1 and specifies that it applies to a curriculum for:
- pupils at a maintained school who are under compulsory school age;
 - pupils at a maintained nursery school;
 - children for whom FNNE is provided.
19. This means that Chapter 1 does not apply to a curriculum for EOTAS, including PRUS, or to a curriculum for pupils at a maintained school who are over compulsory school age.

Maintained schools and maintained nursery schools

Section 10 – Curriculum design

20. This section requires the head teacher of a maintained school or maintained nursery school to design a curriculum.
21. The curriculum must comply with the requirements set out in Chapter 2 of Part 2 (see sections 20 to 24 and section 25). These requirements are discussed further below. It is important to note that the requirements for curriculum content in the case of pupils aged 14 to 16 differ from the requirements for younger pupils. These different requirements will feed through into the design of a curriculum.

Section 11 – Curriculum adoption

22. This section requires the head teacher and governing body of a maintained school or maintained nursery school to adopt the curriculum designed under section 10 as the curriculum for the school's pupils. It also requires them to publish a summary of their adopted curriculum.
23. Both the head teacher and governing body will need to agree to adopt the curriculum.

Section 12 – Curriculum review and revision

24. This section requires the head teacher and governing body of a maintained school or maintained nursery school to keep the school's adopted curriculum under review. They must ensure that it continues to comply with the requirements mentioned above, if necessary by revising it.
25. In considering whether the adopted curriculum continues to comply with those requirements, the head teacher and governing body must consider what has been shown by any assessment arrangements made by them under the Act. (The results of the assessment arrangements might, for instance, indicate that the curriculum is not making provision for appropriate progression and so needs to be revised to deal with this).

Sections 13 and 14 – Welsh Ministers' duty to publish a curriculum for funded non-maintained nursery education settings

26. **Section 13** requires the Welsh Ministers to publish a curriculum which they consider is suitable for FNNE. This approach – which differs from that for schools – reflects the fact that not all FNNE providers will have the resources or experience to design their own curriculum.
27. The curriculum designed by the Welsh Ministers must comply with the requirements in Chapter 2 of Part 2.
28. **Section 14** requires the Welsh Ministers to keep the FNNE curriculum they have published under review and revise it if necessary to ensure it continues to comply with the requirements mentioned above. If they revise their FNNE curriculum, the Welsh Ministers must publish their revised curriculum.

Sections 15 and 16 – Curriculum adoption, review and revision

29. **Section 15** requires an FNNE provider to adopt a curriculum and publish a summary of it. The adopted curriculum must meet the requirements in Chapter 2 of Part 2.
30. The curriculum adopted by the FNNE provider may be that published by the Welsh Ministers under section 13 or another suitable curriculum.
31. **Section 16** requires an FNNE provider to keep their adopted curriculum under review. They must ensure that it continues to comply with the requirements mentioned above, if necessary by revising it.
32. In considering whether the adopted curriculum continues to comply with those requirements, the FNNE provider must consider what has been shown by any assessment arrangements made by them under the Act. (The results of the assessment arrangements might, for instance, indicate that the curriculum is not making provision for appropriate progression and so needs to be revised to deal with this).
33. If the FNNE provider has adopted the curriculum published by the Welsh Ministers under section 13, and the Welsh Ministers revise that curriculum, the provider must consider whether to revise their adopted curriculum to reflect the revisions made by the Welsh Ministers.

Section 17 – Power to make supplementary provision about curriculum adoption and revision

34. This section enables the Welsh Ministers to make regulations about certain procedural matters, including the date by which a curriculum must be adopted.

Section 18 – Power to make supplementary provision about curriculum summaries

35. This section enables the Welsh Ministers to make regulations about what is to be included in a summary of an adopted curriculum, and about its publication.

Chapter 2 – Curriculum Requirements

Section 19 - Introduction

36. This section describes the contents of Chapter 2 and specifies that it applies to a curriculum for:
- pupils at a maintained school who are under compulsory school age;
 - pupils at a maintained nursery school;
 - children for whom FNNE is provided.
37. This means that Chapter 2 does not apply to a curriculum for EOTAS, including PRUS, or to a curriculum for pupils at a maintained school who are over compulsory school age.

Sections 20 to 24 - Curriculum requirements

38. These sections set out the requirements that must be met by a curriculum for a maintained school or a maintained nursery school, or for FNNE. A curriculum cannot be adopted unless it complies with these requirements, as discussed above.
39. A curriculum must:
- enable pupils and children to develop in the ways described in the four purposes (section 20);
 - provide for appropriate progression for pupils and children (section 21);
 - be suitable for pupils and children of differing ages, abilities and aptitudes (section 22);
 - be broad and balanced (section 23);
 - provide for teaching and learning which encompasses each of the areas of learning and experience (including the mandatory elements within the areas of learning and experience) and develops mandatory cross-curricular skills (section 24).
40. [Section 24](#) also imposes a further requirement that applies in relation to a curriculum for pupils aged over 14 but under compulsory school age (years 10 and 11). It requires the curriculum for those pupils to offer them a choice of teaching and learning within each area of learning and experience. This requirement reflects the different needs of this age group. Schools will have the flexibility to develop their own package of choices for these pupils, which may include courses of study or other learning.
41. [Section 24\(2\)](#) requires the provision in the curriculum for teaching and learning encompassing RSE to be developmentally appropriate.
42. [Section 24\(3\)](#) requires the provision in the curriculum for teaching and learning encompassing RVE to accord with Part 1 of Schedule 1. But this requirement does not apply to a curriculum for:
- pupils who are in a class in which the majority are below compulsory school age at the beginning of the school year; or
 - children receiving FNNE.

Section 25 – Power to impose further curriculum requirements

43. This section enables the Welsh Ministers to make regulations that impose additional curriculum requirements in relation to pupils aged 14-16 (Years 10 – 11).

Chapter 3 – Curriculum Implementation

Section 26 – Introduction and interpretation

44. This section describes the contents of Chapter 3 and specifies that it applies to a curriculum for:
- pupils at a maintained school who are under compulsory school age;
 - pupils at a maintained nursery school;
 - children for whom FNNE is provided.
45. This means that Chapter 3 does not apply to a curriculum for EOTAS, including PRUS, or to a curriculum for pupils at a maintained school who are over compulsory school age.
46. In general terms, this Chapter sets out requirements that relate to the way in which an adopted curriculum is put into practice in a school or FNNE setting.

Maintained schools and maintained nursery schools

Section 27 – Duty to ensure implementation of adopted curriculum

47. This section requires the head teacher of a maintained school or maintained nursery school to ensure that the adopted curriculum is implemented in accordance with sections 28, 29 and 30. It also requires the governing body to exercise its functions with a view to ensuring that the adopted curriculum is implemented in that way. The difference between these requirements reflects the different roles of the head teacher and governing body.

Section 28 – General implementation requirements

48. This section sets out general requirements regarding the way in which an adopted curriculum must be implemented for pupils at maintained schools and maintained nursery schools.

Section 29 – Further implementation requirements for pupils aged 3 to 14

49. This section sets out additional requirements that apply when implementing an adopted curriculum for the 3-14 year old age group (below Year 10 in school). It requires the curriculum to be implemented in a way that secures teaching and learning for each pupil that encompasses the areas of learning and experience, including the mandatory elements. Taken with section 6, the effect is that the teaching and learning provided for each pupil must encompass the key concepts set out for each area of learning and experience in the What Matters Code.
50. This section also requires the adopted curriculum to be implemented in a way that secures teaching and learning for each pupil that develops the mandatory cross-curricular skills.
51. [Section 29\(3\)\(a\)](#) requires teaching and learning in respect of the mandatory element of RSE to be suitable for the pupil's stage of development.
52. [Section 29\(3\)\(b\)](#) requires teaching and learning in respect of the mandatory element of RVE to accord with Part 2 of Schedule 1. However, this requirement does not apply to teaching and learning for pupils who are in a class in which the majority are below compulsory school age at the beginning of the school year.

Section 30 – Further implementation requirements for pupils aged 14 to 16

53. This section sets out additional requirements that apply when implementing an adopted curriculum for pupils aged between 14 – 16 (Years 10 and 11 in school).
54. It requires the curriculum to be implemented in a way that secures teaching and learning for each pupil that encompasses the mandatory elements.
55. It also requires the curriculum to be implemented in a way that secures some other teaching and learning for each pupil in each area of learning and experience. So, for example, the curriculum will need to be implemented in a way that secures some additional teaching and learning for each pupil, in the Languages, Literacy and Communication area of learning and experience, as well teaching and learning in respect of the mandatory elements of English and Welsh. But in the case of this age group, unlike the younger age group dealt with in section 29, there is no requirement to secure teaching and learning for each pupil that “encompasses” each of the areas of learning and experience.
56. The teaching and learning secured for each pupil must develop the mandatory cross-curricular skills. It must also include the teaching and learning chosen by the pupil by virtue of section 24 (but see section 31) and any teaching and learning required by virtue of regulations made under section 25.
57. The teaching and learning secured for a pupil in respect of the mandatory element of RSE must be suitable for the pupil’s stage of development. The teaching and learning secured for a pupil in respect of the mandatory element of RVE must be in accordance with Part 2 of Schedule 1.

Section 31 – Power to disapply duty to implement pupil choice

58. As described above, the head teacher of a maintained school is required to implement the adopted curriculum in a way that gives effect the choices made by a pupil aged 14 to 16 by virtue of section 24. Section 31 gives the head teacher power to disapply this duty, in relation to a particular pupil’s choice, by making a determination.
59. Subsections (3) and (4) specify the grounds on which a head teacher may make a determination:
 - The grounds specified in subsection (3) apply where the determination is to be made before the pupil starts the school year in which the majority of pupils in the class will reach the age of 15 (i.e. before the pupil starts year 10).
 - The grounds specified in subsection (4) apply where the determination is to be made at a later date. These grounds are more limited, as the impact of disapplying pupil choice is greater where the pupil has already embarked on the chosen teaching and learning.
60. Subsection (6) enables the Welsh Ministers to make regulations to amend the grounds on which a determination may be made.
61. Where a determination is made under this section, the head teacher will remain under a duty to provide the pupil with the teaching and learning specified in section 30(2). That is to say, the head teacher will have to ensure that teaching and learning is secured for the pupil in each area of learning and experience, in addition to the teaching and learning in respect of the mandatory elements. But a further choice of teaching and learning will not need to be offered to the pupil.

Section 32 - Power to disapply duty to implement pupil choice: supplementary

62. This section imposes a requirement to provide certain information to the pupil and the pupil’s parent where a determination has been made under section 31 not to provide the pupil’s choice of teaching and learning.

63. There is no duty to provide this information to the pupil if the head teacher considers that the pupil does not have the capacity to understand the information that would be given or what it would mean to exercise the appeal right in section 33.
64. In addition, this section gives the Welsh Ministers power to make further provision in regulations in connection with determinations made under section 31.

Section 33 – Reviews and appeals relating to pupil choice

65. This section enables a pupil, or parent of a pupil, who is given information about a determination made under section 31 to require the head teacher to review that determination. If a review is required, the head teacher must either confirm, vary or revoke (i.e. withdraw) the determination, and must give notice of the decision to the pupil and the pupil's parent.
66. If the pupil or parent is unhappy with the outcome of the review, the pupil or the pupil's parent may appeal to the school's governing body.
67. If an appeal is made, the governing body must either confirm, vary or revoke (i.e. withdraw) the head teacher's decision, and must give notice of its decision to the pupil and the pupil's parent.
68. There is no duty to provide information to the pupil about the outcome of a review or appeal if the decision maker considers that the pupil does not have the capacity to understand the information that would be given or (in the case of a decision on a review) what it would mean to exercise the right to appeal.

Funded non-maintained nursery education

Section 34 – Duty to ensure the implementation of adopted curriculum

69. This section requires an FNNE provider to ensure that the adopted curriculum is implemented in accordance with sections 35 and 36. It also requires a local authority that secures FNNE to exercise its functions with a view to ensuring that the adopted curriculum for that FNNE is implemented in that way. A local authority might, for instance, comply with this duty by means of its contractual arrangements with its FNNE providers.

Section 35 – General implementation requirements

70. This section sets out general requirements regarding the way in which an adopted curriculum must be implemented for children receiving FNNE.

Section 36 – Requirements related to areas of learning and experience and cross-curricular skills

71. This section requires the adopted curriculum to be implemented in a way that secures teaching and learning for each child that encompasses the areas of learning and experience, including the mandatory elements. Taken with section 6, the effect is that the teaching and learning provided for each child must encompass the key concepts set out for each area of learning and experience in the What Matters Code.
72. This section also requires the adopted curriculum to be implemented in a way that secures teaching and learning for each child that develops the mandatory cross-curricular skills.
73. Subsection (2) requires teaching and learning for a child in respect of the mandatory element of RSE to be suitable for the child's stage of development.

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) disapplies 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).