

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 General

Section 72 - Status of this Act as an Education Act

168. This section provides that the Act is included in the list of Education Acts set out in section 578 of the 1996 Act.
169. The effect of this is that powers and duties that apply throughout the statute book in relation to the “Education Acts” will apply in relation to the Act. For instance, it means that the Welsh Ministers have the power, under Part 2 of the Schools Standards and Organisation (Wales) Act 2013, to intervene in the conduct of a maintained school or maintained nursery school in the event of its governing body failing to comply with duties under the Act or acting unreasonably in the course of any functions under the Act. It also means that the Welsh Ministers have power, under the 2013 Act, to intervene in the exercise of a function conferred on a local authority under this Act, in the event of the authority failing to comply with duties under the Act or acting unreasonably in the exercise of a function under the Act.

Section 73 - Minor and consequential amendments and repeals

170. **Section 73** introduces Schedule 2 which contains minor and consequential amendments and repeals.

Section 74 - Power to make additional provision to give full effect to this Act etc

171. **Section 74** enables the Welsh Ministers to make provision in regulations that they consider is necessary or appropriate to give effect to any provision in the Act, or in consequence of any provision in the Act. This may be supplementary, incidental or consequential provision, or transitional, transitory or saving provision.
172. The regulations may amend primary or secondary legislation (including the Act itself).

Section 75 - Regulations

173. **Section 75** sets out the legislative procedures applicable to regulations under the Act. Regulations under section 5, section 31, and section 48 will be subject to the affirmative procedure, as will regulations under section 74 that amend or repeal primary legislation. All other regulations (including regulations under section 74 that do not amend or repeal primary legislation) will be subject to the negative procedure.

Section 76 - The What Matters Code and the Progression Code: procedure

174. **Section 76** sets out the procedure that must be followed in making or revising the Codes required under sections 6 and 7 of the Act (the What Matters Code and the Progression Code). In either case, the Welsh Ministers must consult such persons as they think appropriate, before making or revising the Code. They must also lay before Senedd Cymru a draft of the Code (or of proposed revisions to the Code where appropriate). The draft Code must be laid before the Senedd for not less than 40 days. If the Senedd resolves not to approve the Code (or the revised Code) it cannot be issued (or revised). If there is no such resolution the Welsh Ministers must issue the Code (or the revised Code) in the form of the draft as laid before the Senedd.
175. Subsection (6) allows consultation on a Code, required by subsection (2)(a), to be carried out before section 76 comes into force.

Section 77 - The RSE Code: procedure

176. **Section 77** sets out the procedure for making or revising the RSE Code under section 8 of the Act. Before making or revising the Code, the Welsh Ministers must consult such persons as they think appropriate. They must also lay the proposed Code (or revised Code) before the Senedd. If the proposed Code (or revision) is approved by resolution of the Senedd the Welsh Ministers must publish the Code as approved by the Senedd. If the proposed Code (or revision) is not approved by resolution of the Senedd the Welsh Ministers may not issue it.
177. Subsection (4) allows consultation on the Code, required by subsection (1)(a), to be carried out before section 77 comes into force.

Section 78 - Written information, notices and directions

178. The following provisions in the Act require information to be given to certain persons in writing, or require written notices to be given to certain persons, or authorise directions to be given to certain persons (or enable such provision to be made in regulations):
- Section 32 (power to disapply duty to implement pupil choice: supplementary)
 - Section 33 (reviews and appeals relating to pupil choice)
 - Section 38 (exceptions for development work and experiments), see also the requirement in section 40(2))
 - Section 44 (provision of information about temporary exceptions)
 - Section 45 (appeals about temporary exceptions for individual pupils)
 - Section 46 (appeals about temporary exceptions for individual children)
 - Section 56 (duty to make assessment arrangements)
 - Section 57 (promoting and maintaining understanding of progression)
179. **Section 78** specifies the way in which that information, and those notices or directions, may be given to those persons. It makes provision for electronic transmission and for the way in which the information (or notice or direction) may be transmitted to a body corporate or partnership.

Section 79 - Meaning of “maintained school”, “maintained nursery school” and associated expressions

180. **Section 79** provides that a school is a maintained school, for the purposes of the Act, if it is a community, foundation or voluntary school (as defined in the 1998 Act: see sections 20 and 21 of that Act), a community special school (other than one established

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

in a hospital) or a maintained nursery school. In any of these cases, the school must be maintained by a local authority in Wales.

Section 80 - Meaning of “funded non-maintained nursery education” and associated expressions

181. Section 80 defines “funded non-maintained nursery education” and associated terms.

Section 81 - Meaning of “pupil referral unit” and associated expressions

182. Section 81 defines “pupil referral unit” as having the meaning given by section 19A(2) of the 1996 Act (see paragraph 4 of Schedule 2 of this Act). This section also makes provision about the meaning of the terms “local authority” and “management committee” when used in relation to a pupil referral unit.

Section 82 - General interpretation

183. Section 82 defines certain terms used in the Act. It also provides that terms used in the Act that are defined in the 1996 Act will have the meaning given in the 1996 Act. As a result, various terms used in the Act have the meaning set out in the 1996 Act (for example, ‘school’ and ‘parent’).

184. But if a term used in the Act, which is defined in the 1996 Act, is given another meaning by the Act itself, or by the Legislation (Wales) Act 2019, that other meaning, rather than the 1996 Act definition, will apply for the purposes of the Act.

Section 83 - Index of expressions defined in this Act

185. Section 83 provides an index of terms defined by the Act and the relevant provisions which define them.

Section 84 - Coming into force

186. Section 84 provides for Part 7 to come into force on the day after the day of Royal Assent. It provides for the remaining provisions of the Act to come into force on whatever day is specified in an order made by the Welsh Ministers. The order may appoint different days for different purposes, so it could for instance provide for different provisions to come into force on different days, or for the same provision to come into force on different days in relation to, say, pupils of different ages.

187. An order under this section may make transitory, transitional or saving provisions connected to commencement.

188. An order under this section is not subject to any legislative procedure.

Section 85 - Short title

189. This section provides that the short title of the Act is the Curriculum and Assessment (Wales) Act 2021.