



Curriculum and Assessment (Wales) Act 2021

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PART 2

CURRICULUM IN MAINTAINED SCHOOLS, MAINTAINED NURSERY
SCHOOLS AND FUNDED NON-MAINTAINED NURSERY EDUCATION

CHAPTER 4

CURRICULUM IMPLEMENTATION: EXCEPTIONS

37 Introduction

- (1) This Chapter sets out exceptions to the curriculum implementation duties in Chapter 3.
- (2) Section 26 explains the meaning of certain expressions used in this Chapter.

38 Development work and experiments

- (1) The Welsh Ministers may give a direction under this section in order to enable development work or experiments to be carried out.
- (2) A direction may be given in relation to—
 - (a) a school specified in the direction;
 - (b) schools of a description specified in the direction;
 - (c) funded non-maintained nursery education of a description specified in the direction.
- (3) A direction given in relation to a school must be given—
 - (a) to the head teacher and the governing body of the school, and
 - (b) to the local authority that maintains the school (unless the school is a foundation or voluntary aided school).

- (4) A direction given in relation to a school may, for a period specified in the direction—
- (a) disapply sections 27, 28, 29 and 30, or any of those sections, in relation to the school;
 - (b) provide that sections 27, 28, 29 and 30, or any of those sections, apply in relation to the school with the modifications specified in the direction.
- (5) A direction given in relation to a school may also require—
- (a) the head teacher and the governing body of the school, and
 - (b) the local authority that maintains the school (unless the school is a foundation or voluntary aided school),
- to report to the Welsh Ministers on any matters specified in the direction at times or intervals specified in the direction.
- (6) A direction given in relation to funded non-maintained nursery education must be given to—
- (a) the provider of the education, and
 - (b) the local authority that secures the education.
- (7) A direction given in relation to funded non-maintained nursery education may, for a period specified in the direction—
- (a) disapply sections 34, 35 and 36, or any of those sections, in relation to that education;
 - (b) provide that sections 34, 35 and 36, or any of those sections, apply in relation to that education with the modifications specified in the direction.
- (8) A direction given in relation to funded non-maintained nursery education may also require—
- (a) the provider of the education, and
 - (b) the local authority that secures the education,
- to report to the Welsh Ministers on any matters specified in the direction at times or intervals specified in the direction.
- (9) A person to whom a direction is given under this section must comply with the direction.

39 Development work and experiments: conditions

- (1) The Welsh Ministers may give a direction under section 38 only if the conditions in this section are met.
- (2) The first condition is that the Welsh Ministers are satisfied that the curriculum that will be implemented for the pupils or children as a result of the direction will—
 - (a) enable each pupil or child to develop in the ways described in the four purposes,
 - (b) secure teaching and learning that offers appropriate progression for each pupil or child,
 - (c) be suitable for each pupil or child’s age, ability and aptitude,
 - (d) take account of each pupil’s or child’s additional learning needs (if any), and
 - (e) secure broad and balanced teaching and learning for each pupil or child.

- (3) The second condition, in the case of a direction relating to a community school, voluntary controlled school, community special school or maintained nursery school, is that the direction is given—
 - (a) on an application made by the governing body with the local authority's agreement,
 - (b) on an application made by the local authority with the governing body's agreement, or
 - (c) on a proposal made by the Welsh Ministers with the agreement of the governing body and the local authority.
- (4) The second condition, in the case of a direction relating to a foundation school or voluntary aided school, is that the direction is given—
 - (a) on an application made by the governing body, or
 - (b) with the governing body's agreement.
- (5) The second condition, in the case of a direction relating to funded non-maintained nursery education, is that the direction is given—
 - (a) on an application made by the local authority with the agreement of the provider of the education, or
 - (b) on a proposal made by the Welsh Ministers with the agreement of the local authority and the provider of the education.
- (6) In this section—
 - (a) references to the local authority, in relation to a school, are to the local authority that maintains the school;
 - (b) references to the local authority, in relation to funded non-maintained nursery education, are to the local authority that secures the education.

40 Development work and experiments: supplementary

- (1) This section applies in relation to a direction given under section 38.
- (2) The direction must be given in writing.
- (3) The Welsh Ministers must publish the direction.
- (4) Where the direction relates to a school—
 - (a) the head teacher and governing body of the school must publish a summary of the curriculum that will be implemented as a result of the direction, and
 - (b) section 12 applies in relation to the school only to the extent that the exercise of functions under that section is compatible with the direction.
- (5) Where the direction relates to funded non-maintained nursery education—
 - (a) the provider of the education must publish a summary of the curriculum that will be implemented as a result of the direction, and
 - (b) section 16 applies in relation to the education only to the extent that the exercise of functions under that section is compatible with the direction.

41 Pupils and children with additional learning needs

- (1) The additional learning provision described in an individual development plan prepared or maintained by a local authority under Part 2 of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#) may include provision—
 - (a) that disappplies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil;
 - (b) that applies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil with the modifications specified in the plan;
 - (c) that disappplies sections 34, 35 and 36, or any of those sections, in relation to a child;
 - (d) that applies sections 34, 35 and 36, or any of those sections, in relation to a child with the modifications specified in the plan.
- (2) The special educational provision specified in an EHC plan under section 37 of the [Children and Families Act 2014 \(c. 6\)](#) (education, health and care plans) may include provision—
 - (a) that disappplies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil;
 - (b) that applies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil with the modifications specified in the plan;
 - (c) that disappplies sections 34, 35 and 36, or any of those sections, in relation to a child;
 - (d) that applies sections 34, 35 and 36, or any of those sections, in relation to a child with the modifications specified in the plan.
- (3) But an individual development plan or EHC plan may include provision referred to in subsection (1) or (2) only if the local authority is satisfied that the curriculum that will be implemented for the child as a result of the disapplication or modification will—
 - (a) enable the pupil or child to develop in the ways described in the four purposes,
 - (b) secure teaching and learning that offers appropriate progression for the pupil or child,
 - (c) be suitable for the pupil or child’s age, ability and aptitude, and
 - (d) secure broad and balanced teaching and learning for the pupil or child.
- (4) Regulations may specify further conditions that must be satisfied before an individual development plan or EHC plan may include provision referred to in subsection (1) or (2).
- (5) In this section, the reference to the local authority is to the local authority that prepares or maintains the individual development plan or that secures the preparation, amendment or replacement of the EHC plan.

42 Temporary exceptions for individual pupils and children

- (1) Regulations may enable the head teacher of a maintained school or maintained nursery school to determine, in cases or circumstances specified in the regulations—
 - (a) that sections 27, 28, 29 and 30, or any of those sections, are to be disappplied in relation to a registered pupil at the school during the period specified in the determination, or

- (b) that sections 27, 28, 29 and 30, or any of those sections, are to be applied in relation to a registered pupil at the school, during the period specified in the determination, with the modifications specified in the determination.
- (2) Regulations may enable a provider of funded non-maintained nursery education to determine, in cases or circumstances specified in the regulations—
- (a) that sections 34, 35 and 36, or any of those sections, are to be disapplied, during the period specified in the determination, in relation to a child for whom the education is provided, or
 - (b) that sections 34, 35 and 36, or any of those sections, are to be applied in relation to such a child, during the period specified in the determination, with the modifications specified in the determination.
- (3) If regulations are made under this section, they must provide that a person may make a determination under the regulations only if satisfied that the curriculum that will be implemented for the pupil or child as a result of the determination will—
- (a) enable the pupil or child to develop in the ways described in the four purposes,
 - (b) secure teaching and learning that offers appropriate progression for each pupil or child,
 - (c) be suitable for the pupil or child’s age, ability and aptitude,
 - (d) take account of the pupil’s or child’s additional learning needs (if any), and
 - (e) secure broad and balanced teaching and learning for the pupil or child.
- (4) Regulations made under this section may specify further conditions that must be met before a determination may be made under the regulations.

43 Temporary exceptions for individual pupils and children: supplementary

- (1) This section makes further provision about regulations made under section 42.
- (2) The regulations must not allow a determination to be made under the regulations on the grounds that a pupil or child has, or may have, additional learning needs (see, instead, section 41).
- (3) The regulations must specify that that the operative period of a determination made under the regulations is either—
- (a) a fixed period specified in the determination that does not exceed 6 months, or
 - (b) a period that must be brought to an end (in accordance with the regulations) no later than 6 months from its beginning.
- (4) But the regulations may specify a different operative period for a determination if that operative period is to begin—
- (a) immediately after the end of the operative period of a previous determination, or
 - (b) before the end of a period, specified in the regulations, that begins with the end of the operative period of a previous determination.
- (5) The regulations may enable a person who makes a determination under the regulations—
- (a) to vary the determination, except in relation to its operative period, or
 - (b) to revoke the determination.
- (6) The regulations may specify—

- (a) cases or circumstances in which a determination made under the regulations may be varied or revoked;
 - (b) conditions which must be met before a determination made under the regulations may be varied or revoked.
- (7) In this section, the “operative period” of a determination means the period for which the determination has effect.

44 Provision of information about temporary exceptions

- (1) A head teacher who makes, varies or revokes a determination under regulations made under section 42 must give the information described in subsections (3) and (4), in writing, to—
- (a) the pupil to whom the determination relates,
 - (b) the pupil’s parent,
 - (c) the governing body of the school, and
 - (d) the local authority that maintains the school.
- (2) A provider of funded non-maintained nursery education who makes, varies or revokes a determination under regulations made under section 42 must give the information described in subsections (3) and (4), in writing, to—
- (a) the parent of the child to whom the determination relates, and
 - (b) the local authority that secures the education.
- (3) The information is—
- (a) the fact that the determination has been made, varied or revoked;
 - (b) the effect of the determination, variation or revocation;
 - (c) the reasons for making, varying or revoking the determination;
 - (d) information about—
 - (i) the right to make an appeal under section 45 (in the case of a determination that relates to a pupil);
 - (ii) the right to make an appeal under section 46 (in the case of a determination that relates to any other child).
- (4) Where a determination is made or varied, the information must also include—
- (a) a description of the provision that will be made for the pupil or child’s education during the period specified in the determination;
 - (b) a description of the way in which the head teacher or provider proposes to ensure that the adopted curriculum is implemented for the pupil or child at the end of that period.
- (5) The duty in subsection (1)(a) does not apply if the head teacher considers that the pupil does not have the capacity to understand—
- (a) the information that would be given, or
 - (b) what it means to exercise the right conferred by section 45.

45 Appeals about temporary exceptions for individual pupils

- (1) This section applies where—
- (a) the head teacher of a school makes, varies or revokes a determination relating to a pupil under regulations made under section 42, or

- (b) a pupil, or a pupil's parent, asks the head teacher of a school to make a determination under those regulations in relation to the pupil, but no determination is made.
- (2) Each of the following may appeal to the governing body of the school—
 - (a) the pupil;
 - (b) the pupil's parent.
- (3) Subsection (2)(a) does not apply if the governing body considers that the pupil in question does not have the capacity to understand what it means to exercise the right conferred by this section.
- (4) If an appeal is made under this section, the governing body may—
 - (a) direct the head teacher, in writing, to take the action that it considers appropriate in respect of the determination referred to in subsection (1)(a) or the request referred to in subsection (1)(b), or
 - (b) inform the head teacher, in writing, that no such direction will be given.
- (5) The governing body must give written notice of its decision to—
 - (a) the pupil, and
 - (b) the pupil's parent.
- (6) Subsection (5)(a) does not apply if the governing body considers that the pupil in question does not have the capacity to understand the information that would be given.
- (7) The head teacher must comply with a direction given under subsection (4).
- (8) Regulations may make further provision in connection with appeals under this section.

46 Appeals about temporary exceptions for individual children

- (1) This section applies where—
 - (a) a provider of funded non-maintained nursery education makes, varies or revokes a determination under regulations made under section 42 in relation to a child for whom the education is provided, or
 - (b) the parent of a child for whom funded non-maintained nursery education is provided asks the provider of the education to make a determination under those regulations in relation to the child, but no determination is made.
- (2) The child's parent may appeal to the local authority that has secured the education.
- (3) If an appeal is made under this section, the local authority may—
 - (a) direct the provider, in writing, to take the action that the local authority considers appropriate in respect of the determination referred to in subsection (1)(a) or the request referred to in subsection (1)(b), or
 - (b) inform the provider, in writing, that no such direction will be given.
- (4) The local authority must give written notice of its decision to the child's parent.
- (5) The provider must comply with a direction given under subsection (3).
- (6) Regulations may make further provision in connection with appeals under this section.

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

Sections 27, 28, 29 and 30 do not apply in relation to pupils for whom arrangements are made under section 19A of the [Education Act 1996 \(c. 56\)](#) (see, instead, Part 3).

48 Power to make provision for further exceptions

(1) Regulations may—

- (a) disapply sections 27, 28, 29 and 30, or any of those sections, in cases or circumstances specified in the regulations;
- (b) provide that sections 27, 28, 29 and 30, or any of those sections, apply with the modifications specified in the regulations in cases or circumstances specified in the regulations;
- (c) disapply sections 34, 35 and 36, or any of those sections, in cases or circumstances specified in the regulations;
- (d) provide that sections 34, 35 and 36, or any of those sections, apply with the modifications specified in the regulations in cases or circumstances specified in the regulations.

(2) Regulations under this section may confer a discretion on a person.