
WELSH STATUTORY INSTRUMENTS

2022 No. 670 (W. 150)

EDUCATION, WALES

The Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022

Made - - - - *15 June 2022*
Laid before Senedd Cymru *17 June 2022*
Coming into force in accordance with regulation 1(2) to (6)

The Welsh Ministers, in exercise of the powers conferred on them by sections 42(1), (2) and (4) and 75(1) of the Curriculum and Assessment (Wales) Act 2021⁽¹⁾ make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022.

(2) These Regulations come into force on 1 September 2022—

- (a) for pupils⁽²⁾ and children⁽³⁾ for whom nursery education is provided⁽⁴⁾,
- (b) for pupils in a reception year⁽⁵⁾ at a maintained school,
- (c) for pupils in years 1 to 6 at a maintained school⁽⁶⁾, and
- (d) for pupils in year 7 at a maintained school where the head teacher and governing body have adopted a relevant curriculum⁽⁷⁾ under Part 2 of the 2021 Act.

(3) These Regulations come into force on 1 September 2023—

- (a) for pupils in year 7 at a maintained school, and
- (b) for pupils in year 8 at a maintained school.

(4) These Regulations come into force on 1 September 2024 for pupils in year 9 at a maintained school.

(1) [2021 asc 4](#).

(2) See regulation 2 for the definition of “pupil”.

(3) See regulation 2 for the definition of “child”.

(4) See regulation 2 for the definition of “nursery education”.

(5) See regulation 2 for the definition of “reception year”.

(6) See regulation 2 for the definition of “maintained school”.

(7) See regulation 2 for the definition of “relevant curriculum”.

(5) These Regulations come into force on 1 September 2025 for pupils in year 10 at a maintained school.

(6) These Regulations come into force on 1 September 2026 for pupils in year 11 at a maintained school.

Interpretation

2. In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996⁽⁸⁾;

“the 2021 Act” (“*Deddf 2021*”) means the Curriculum and Assessment (Wales) Act 2021;

“additional learning needs” (“*anghenion dysgu ychwanegol*”) has the meaning given to it in section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018⁽⁹⁾;

“child” (“*plentyn*”) has the meaning given to it in section 579(1) of the 1996 Act;

“determination” (“*penderfyniad*”) means a determination made under section 42(1) or (2) of the 2021 Act;

“funded non-maintained nursery education” (“*addysg feithrin a gyllidir ond nas cynhelir*”) has the meaning given to it in section 80(1)(a) of the 2021 Act;

“local authority” (“*awdurdod lleol*”) means the local authority that maintains the school;

“nursery education” (“*addysg feithrin*”) means full-time or part-time education suitable for children or pupils who have not attained compulsory school age provided—

(a) in a maintained school or a maintained nursery school, or

(b) by the provider of funded non-maintained nursery education;

“operative date” (“*dyddiad gweithredol*”) means the date on which a determination comes into force;

“operative period” (“*cyfnod gweithredol*”) has the meaning given to it in section 43 of the 2021 Act;

“parent” (“*rhiant*”) has the meaning given to it in section 576 of the 1996 Act;

“provider of funded non-maintained nursery education” (“*darparwr addysg feithrin a gyllidir ond nas cynhelir*”) has the meaning given to it in section 80(1) of the 2021 Act;

“pupil” (“*disgybl*”) has the meaning given to it in section 26(4)(a) of the 2021 Act;

“reception year” (“*blwyddyn derbyn*”) means a year group in which the majority of the pupils attain the age of 5;

“relevant curriculum” (“*cwricwlwm perthnasol*”) has the meaning given to it in section 56(5)(a) and (b) of the 2021 Act;

“relevant person” (“*person perthnasol*”) means—

(a) in relation to a maintained school and a maintained nursery school, the head teacher, and

(b) in relation to funded non-maintained nursery education, the provider;

“special educational needs” (“*anghenion addysgol arbennig*”) has the meaning given to it in section 312 of the 1996 Act⁽¹⁰⁾;

⁽⁸⁾ 1996 c. 56.

⁽⁹⁾ 2018 anaw 2.

⁽¹⁰⁾ Section 312(1) was amended by section 82 of, and paragraphs 1 and 11(1) and (2) of Part 1 of Schedule 3 to, the Children and Families Act 2014 (c. 6). Subsection (2) was amended by section 57(1) and (4) of, and paragraph 23(a) and (b) of Schedule 7 and Schedule 8 to, the Education Act 1997 (c. 44), by section 59 of, and paragraphs 1 and 6(1) and (2) of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), by S.I. 2010/1158 and by section 82 of, and paragraphs 1 and 11(1) and (2) of Part 1 of Schedule 3 to, the Children and Families Act 2014. Subsection (3A) was inserted by section 59

“year 1” (“*blwyddyn 1*”) means a year group in which the majority of pupils attain the age of 6;
“year 2” (“*blwyddyn 2*”) means a year group in which the majority of pupils attain the age of 7;
“year 3” (“*blwyddyn 3*”) means a year group in which the majority of pupils attain the age of 8;
“year 4” (“*blwyddyn 4*”) means a year group in which the majority of pupils attain the age of 9;
“year 5” (“*blwyddyn 5*”) means a year group in which the majority of pupils attain the age of 10;
“year 6” (“*blwyddyn 6*”) means a year group in which the majority of pupils attain the age of 11;
“year 7” (“*blwyddyn 7*”) means a year group in which the majority of pupils attain the age of 12;
“year 8” (“*blwyddyn 8*”) means a year group in which the majority of pupils attain the age of 13;
“year 9” (“*blwyddyn 9*”) means a year group in which the majority of pupils attain the age of 14;
“year 10” (“*blwyddyn 10*”) means a year group in which the majority of pupils attain the age of 15;
“year 11” (“*blwyddyn 11*”) means a year group in which the majority of pupils attain the age of 16;
“year group” (“*grŵp blwyddyn*”) means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

Revocation

3. The Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999(11) are revoked from 1 September 2026.

Cases and circumstances in which determinations may be made

4.—(1) A relevant person may only make a determination in respect of a pupil or child if satisfied—

- (a) that it is not for the time being appropriate to implement the relevant curriculum for that pupil or child, and
- (b) the circumstances that give rise to that opinion are likely to change significantly so that, within 6 months of the operative date, it will be appropriate to implement the relevant curriculum for that pupil or child.

(2) A relevant person may only make a determination 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—
 - (i) additional learning needs, or
 - (ii) special educational needs for a pupil or child in relation to whom Chapter 1 of Part 4 of the 1996 Act continues to apply, and

of, and paragraphs 1 and 6(1) and (3) of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 and was further amended by section 82 of, and paragraphs 1 and 11(1), (3)(a)(i) and (ii), (3)(b) and (4) of Part 1 of Schedule 3 to, the Children and Families Act 2014. Subsection (4) was amended by section 140(1) and (3) of, and paragraph 71(a) of Schedule 30 to, the School Standards and Framework Act 1998 (c. 31). Subsection (5) was amended by section 140(1) and (3) of, and paragraph 71(b) of Schedule 30 to, the School Standards and Framework Act 1998. Section 312 has now been repealed by section 96 of, and paragraph 4(1) and (9) of Schedule 1 to, the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2) but that repeal is not yet fully in force.

(11) S.I. 1999/1815, amended by S.I. 2010/1142 (W. 101).

(e) secure broad and balanced teaching and learning for the pupil or child.

(3) A relevant person must not make a determination on the grounds that a pupil or child has, or may have, additional learning needs or special educational needs.

Operative period

5.—(1) A relevant person must determine in respect of any registered pupil the operative date and operative period of that determination.

(2) No operative date which is less than 1 month after the date on which the determination is given may be so specified unless the relevant person is satisfied that it is essential in the interests of the pupil or for other educational reasons that the determination should come into force earlier.

(3) The maximum operative period that may be specified in a determination is either—

(a) a fixed period that does not exceed 6 months, or

(b) a period that must be brought to an end by the relevant person no later than 6 months from its beginning.

Variation of determinations

6.—(1) A relevant person may vary any determination, except in relation to its operative period, if satisfied that any provision contained in it is no longer appropriate for that pupil or child.

(2) A variation to a determination does not come into force until at least 1 month after the date on which notice of variation is given unless the relevant person is satisfied that it is essential in the interests of the pupil or child or for other educational reasons for it to be brought into force earlier.

Revocation of determinations

7. Where a relevant person considers that a determination made is no longer appropriate for the pupil or child, the relevant person may, by a notice in writing revoke that determination.

Further determinations by head teachers

8.—(1) A head teacher who has made a determination in respect of a pupil under regulation 4 may make a further determination in respect of that pupil if satisfied—

(a) that it is still not for the time being appropriate to implement the relevant curriculum for that pupil, and

(b) the circumstances that give rise to that opinion are likely to change significantly so that, within 3 months of the operative date, it will be appropriate to implement the relevant curriculum for that pupil.

(2) The operative period of the further determination must begin immediately after—

(a) the end of the operative period of the first determination, subject to the prior written consent of 3 members of the governing body being obtained, and

(b) the expiry of a further determination made under paragraph (1) subject to the prior written consent of 3 members of the governing body and of the local authority being obtained.

(3) A head teacher may make a further determination based on different reasons for which the first determination was made if the head teacher obtains the prior written consent of—

(a) 3 members of the governing body, and

(b) the local authority.

Further determinations by providers of funded non-maintained nursery education

9.—(1) A provider of funded non-maintained nursery education who has made a determination in respect of a child may make a further determination in respect of that child if satisfied—

- (a) that it is still not for the time being appropriate to implement the relevant curriculum for that child, and
- (b) the circumstances that give rise to that opinion are likely to change significantly so that, within 3 months of the operative date, it will be appropriate to implement the relevant curriculum for that child.

(2) The operative period of the further determination must begin immediately after—

- (a) the end of the operative period of the first determination, and
- (b) the expiry of a further determination made under paragraph (1).

(3) A provider of funded non-maintained nursery education may make a further determination of not more than 3 months based on different reasons for which the first determination was made.

Pupil or parental requests

10.—(1) A pupil, or a pupil's parent, may at any time request the head teacher to make a determination (or a further determination), or to revoke or vary a determination currently in force.

(2) A child's parent may at any time request the provider of funded non-maintained nursery education to make a determination (or a further determination), or to revoke or vary a determination currently in force.

(3) A request may be made orally or in writing and must include the reasons for which it is made.

(4) The head teacher and provider of non-maintained funded nursery education are not required to consider a request to revoke or vary a determination currently in force more than once during each of—

- (a) the operative period of that determination, and
- (b) the operative period of any further determination or determinations made under regulation 8 or 9.

Pupil or parental requests: Notice

11. The relevant person must, within 2 weeks of receiving a request under regulation 10(1) or (2) make, vary or revoke the determination or give notice of the decision to refuse to do so.

15 June 2022

Jeremy Miles
Minister for Education and Welsh Language, one
of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Curriculum and Assessment (Wales) Act 2021 (“the 2021 Act”) establishes a new framework for a curriculum and makes provision about assessment for pupils and children in Wales (“the CfW”).

These Regulations enable head teachers of maintained schools and maintained nursery schools and providers of funded non-maintained nursery education (“the relevant person”) to determine that the provisions of the CfW should not apply to a child or pupil, or should apply with modifications. The term “provider of funded non-maintained nursery education” is defined in regulation 2.

Regulation 4 provides that a determination may only be given in cases where the relevant person considers that it is not appropriate for the time being to implement the relevant curriculum for that child or pupil and the circumstances are likely to change so that within 6 months of the date on which a determination comes into force, it will be appropriate to implement the relevant curriculum for that pupil or child. The term “relevant curriculum” has the meaning given to it in section 56(5) (a) and (b) of the 2021 Act.

Regulation 5 provides for the duration of a determination. In no case is the duration of the first determination to exceed 6 months.

Regulation 6 provides that a determination may be varied (except so as to extend its operative period). Regulation 7 makes provision for the revocation of the determination.

Regulation 8 provides that further determinations may be made in certain circumstances and subject, in some cases, to the consent of the local authority or the governing body, or both. Regulation 9 makes broadly the same provision for providers of funded non-maintained nursery education.

Regulation 10 provides that parents of a child or pupil may request the relevant person make a determination or that they revoke or vary an existing determination.

Regulation 11 provides the relevant person must make, vary or revoke a determination within two weeks, with reasons if the request is refused.

Section 44 of the 2021 Act makes provision about the information that a head teacher and a provider of funded non-maintained nursery education must provide when making, varying or revoking a determination.

Section 45 of the 2021 Act provides a right of appeal to a pupil or pupil’s parent in relation to a head teacher’s determination made under section 42 of the 2021 Act and these Regulations. Section 46 provides a right of appeal to a child’s parent in relation to a determination made by the provider of funded non-maintained nursery education under section 42 of the 2021 Act and these Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff CF10 3NQ and on the Welsh Government website at www.gov.wales.