

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Curriculum and Assessment (Wales) Act 2021 which was passed by Senedd Cymru on 09 March 2021 and received Royal Assent on 29 April 2021. They have been prepared by the Education Directorate of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. In these Explanatory Notes, “the 1996 Act” refers to the Education Act 1996 and “the 1998 Act” refers to the Schools Standards and Framework Act 1998. References to local authorities, maintained schools, special schools, funded non-maintained settings and other education providers, are to those in Wales unless otherwise indicated. References to sections and Parts are to those of the Act, unless otherwise indicated.
3. Also, in these Explanatory Notes, references to funded non-maintained nursery education, or “FNNE”, are to nursery education provided other than at a maintained nursery school, under arrangements made by a local authority in exercising its duty to secure nursery education under section 118 of the 1998 Act. References to post compulsory education are to education provided to young persons who are above compulsory school age.
4. Commonly used abbreviations:

RSE	Relationships and Sexuality Education
RVE	Religion, Values and Ethics
RE	Religious Education
FNNE	Funded Non-maintained Nursery Education
PRU	Pupil Referral Unit
EOTAS	Education Other Than At School

### **GENERAL OVERVIEW OF THE ACT**

5. The Act has seven Parts comprising 85 sections and two Schedules. Part 2 is separated into four chapters.

6. The Act makes provision about curriculum and assessment arrangements for:
  - pupils under 16 years old at maintained schools;
  - pupils at maintained nursery schools;
  - children receiving FNNE;
  - pupils and children for whom the local authority has made arrangements (under the 1996 Act) for education to be provided otherwise than at a school, for example, in a PRU; and
  - it also makes specific curriculum-related provision for post-compulsory education in maintained schools.
7. Act repeals Part 7 of the Education Act 2002 (“the 2002 Act”) which, prior to the coming into force of this Act, set out the curriculum requirements for maintained schools and maintained nursery schools in Wales.
8. It makes provision about the development, adoption and implementation of a curriculum for pupils at a maintained school or maintained nursery school, and for the development and implementation of a curriculum in the other contexts in which the Act applies. It also confers duties and powers on the Welsh Ministers to produce Codes and guidance to support education practitioners to use their professionalism and creativity to meet the needs of all learners.
9. The intention is to ensure that all pupils and children to whom the Act applies can obtain experiences, knowledge and skills that enable them to develop in the ways described in the four purposes. To this end the Act requires teaching and learning that enables those pupils and children to develop in those ways; that is broad and balanced; that is suitable for their ages, abilities and aptitudes; and that offers appropriate progression.
10. At its core, the Act seeks to secure teaching and learning that supports learners to develop higher standards of literacy and numeracy, to be digitally and bilingually competent, to evolve into enterprising, creative and critical thinkers and to be confident, capable and caring citizens.

11. Certain expressions are used in the Curriculum and Assessment (Wales) Act that are defined (or given meaning by) the Education Act 1996:

Expression	Provision
additional learning needs ( <i>"anghenion dysgu ychwanegol"</i> )	section 579(1) of the 1996 Act
additional learning provision ( <i>"darpariaeth ddysgu ychwanegol"</i> )	section 579(1) of the 1996 Act
child ( <i>"plentyyn"</i> )	section 579(1) of the 1996 Act
compulsory school age ( <i>"oedran ysgol gorfodol"</i> )	section 8 of the 1996 Act
EHC plan ( <i>"cynllun AIG"</i> )	section 579(1) of the 1996 Act
functions ( <i>"swyddogaethau"</i> )	section 579(1) of the 1996 Act
head teacher ( <i>"pennaeth"</i> )	section 579(1) of the 1996 Act
individual development plan ( <i>"cynllun datblygu unigol"</i> )	section 579(1) of the 1996 Act
local authority ( <i>"awdurdod lleol"</i> )	section 579(1) of the 1996 Act
local authority in wales ( <i>"awdurdod lleol yng nghymru"</i> )	section 579(1) of the 1996 Act
nursery school ( <i>"ysgol feithrin"</i> )	section 6(1) of the 1996 Act
parent ( <i>"rhiant"</i> )	section 576 of the 1996 Act
pupil ( <i>"disgybl"</i> )	section 3 of the 1996 Act
registered pupil ( <i>"disgybl cofrestredig"</i> )	section 434(5) of the 1996 Act
school year ( <i>"blwyddyn ysgol"</i> )	section 579(1) of the 1996 Act
special school ( <i>"ysgol arbennig"</i> )	section 337(2) of the 1996 Act
trust deed ( <i>"gweithred ymddiriedolaeth"</i> )	section 579(1) of the 1996 Act
young person ( <i>"person ifanc"</i> )	section 579(1) of the 1996 Act

## COMMENTARY ON SECTIONS PART 1 - BASIC CONCEPTS AND KEY DOCUMENTS

### Section 1 - Introduction

12. This section describes the contents of Part 1 and specifies the curricula in relation to which the Part applies.

### Sections 2 to 4 - Basic concepts

13. These sections set out basic concepts that have effect in relation to a curriculum for the pupils and children described in section 1.

14. Section 3 lists the areas of learning and experience and the mandatory elements within them. The mandatory elements are English; Relationships and Sexuality Education (RSE); Religion, Values and Ethics (RVE); and Welsh. But subsection (3) provides that English is not to be treated as being a mandatory element of a curriculum for:
- a class in which most pupils are aged under seven, or
  - funded non-maintained nursery education, or
  - pupils and children aged under seven for whom education is provided in a pupil referral unit or otherwise under section 19A of the Education Act 1996 (discussed further below).

### **Sections 6 to 8 - Codes**

15. These sections require the Welsh Ministers to publish the following Codes:
- the What Matters Code - setting out key concepts for each area of learning and experience;
  - the Progression Code - setting out how a curriculum must make provision for progression by pupils and children;
  - the RSE Code - setting out themes and matters that must be covered by the mandatory element of RSE.
16. A curriculum for the pupils and children described in section 1 must accord with the Codes.
17. The Welsh Ministers must keep the What Matters and Progression Codes under review and may revise those Codes.

## **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).

## **PART 3 - CURRICULUM FOR EXCEPTIONAL PROVISION OF EDUCATION IN PUPIL REFERRAL UNITS OR ELSEWHERE**

### **Section 49 - Introduction**

106. This section describes the contents of Part 3. The Part makes provision about the curriculum for education provided for children of compulsory school age under section 19A of the 1996 Act:
  - at pupil referral units, or
  - otherwise than at pupil referral units.
107. Local authorities in Wales are required to make arrangements for the provision of suitable education under section 19A of the 1996 Act for children of compulsory school age who would not receive a suitable education unless such arrangements were made: for example, for children who are ill or excluded from school.

108. Section 19A is inserted into the 1996 Act by paragraph 4 of Schedule 2; section 19 of the 1996 Act (which previously imposed similar requirements) ceases to have effect in relation to local authorities in Wales on the coming into force of this Act.

### *Pupil Referral Units (PRUs)*

#### **Section 50 – Curriculum requirements**

109. This section requires the local authority, the management committees (if there is one\*) and the teacher in charge of a PRU to exercise their functions so as to ensure that the PRU has a curriculum which complies with requirements set out in subsections (2) to (5). It also requires the teacher in charge of the PRU to publish a summary of that curriculum, or to arrange for it to be published.
110. \*Under paragraph 15 of Schedule 1 to the 1996 Act, the Welsh Ministers may make regulations requiring local authorities to establish management committees for PRUs. The regulations may include provisions about the membership and functions of the committees. Whilst the Welsh Ministers have made regulations requiring local authorities to establish management committees, the 1996 Act does not require them to retain management committees. The Welsh Ministers may decide, in future, to revoke the regulations without replacing them, which will mean that PRUs will no longer have management committees. The references throughout this Part to “the management committee (if there is one)” allows for this possibility.
111. In a maintained school, the head teacher must design a curriculum for the school and the head teacher and governing body must then adopt it. It then falls to the head teacher to implement that curriculum for each pupil at the school.
112. Subsection (1) takes a different approach for PRUs. Here, the local authority, the management committee and the teacher in charge of a PRU must all exercise their functions so as to ensure that there is a curriculum for the unit that complies with the requirements sets out in subsections (2) to (5). It then falls to the teacher in charge of the unit to implement that curriculum for each pupil at the unit.
113. There are certain differences between the curriculum requirements for maintained schools and PRUs. These reflect the particular challenges of providing teaching and learning in PRUs, as compared to maintained schools, and the particular needs of pupils attending these units.

114. There are a range of reasons why children may attend PRUs, rather than maintained schools. These reasons may include illness, refusal to attend school or having very challenging behaviour associated with social, emotional and behavioural difficulties. Pupils at PRUs have often missed extended periods of education and have gaps in their learning. They may also have low self-esteem and lack confidence, and many have low aspirations for their future. For these reasons, the curriculum requirements for pupils at PRUs are not the same as for those at maintained schools. While PRUs are concerned with educational progress, the teaching and learning at PRUs must also focus on helping these pupils to address and overcome barriers which prevent them from accessing mainstream provision and from participating in education.
115. Subsection (2) therefore requires the local authority, the management committee and the teacher in charge of a PRU to exercise their functions so as to ensure there is a curriculum that:
- enables pupils to develop in the ways described in the four purposes;
  - provides for appropriate progression for pupils;
  - is suitable for pupils of differing ages, abilities and aptitudes;
  - is broad and balanced so far as appropriate for pupils;
  - provides for teaching and learning that:
    - encompasses the Health and Well-being area of learning and experience;
    - encompasses the mandatory element of RSE in a developmentally appropriate way; and
    - develops the cross-curricular skills; and
  - if it is reasonably possible and appropriate, provides for teaching and learning in the other areas of learning and experience and the other mandatory elements.
116. A PRU curriculum does not have to encompass all the areas of learning and experience and all the mandatory elements. It must encompass the Health and Well-being area of learning and experience and the mandatory element of RSE, but the intention is to allow PRUs to decide what is reasonably possible and appropriate to provide in terms of teaching and learning in other areas of learning and experience and other mandatory elements.

### **Section 51 – Curriculum review and revision**

117. This section requires the local authority, the management committee and the teacher in charge of a PRU to keep the unit's curriculum under review. They must ensure that it continues to comply with the requirements set out in section 50(2), (3) and (4), if necessary by revising it. In considering whether the curriculum continues to comply with those requirements, they must take account of information gathered from assessment arrangements implemented by them under the Act (see section 56).
118. If a PRU curriculum is revised, the teacher in charge of the unit must publish the revised curriculum or arrange for it to be published.

## **Section 52 – Curriculum implementation**

119. This section requires the teacher in charge of a PRU to ensure that the unit's curriculum is implemented in accordance with the requirements set out in subsections (1) to (4). These requirements include a requirement to implement the curriculum in a way that takes account of each pupil's ALN (if any).
120. This section also requires the local authority and the management committee for a PRU to exercise their functions with a view to ensuring that the curriculum is implemented in accordance with these requirements.

## ***Other education provided under section 19A of the Education Act 1996***

## **Section 53 – Curriculum requirements**

121. This section applies to local authorities that make arrangements under section 19A of the 1996 Act to provide education for children otherwise than at PRUs. Arrangements of this kind are made for a varied group of learners whose circumstances are often unique. For example, a learner may ordinarily attend a maintained school but for reasons of illness may be unable to attend for a period of time and may need to be taught at home or in hospital.
122. The range of circumstances that may need to be addressed under these arrangements makes it inappropriate and impractical to require a local authority to design a single, common curriculum for the education provided to this cohort of learners. Instead, the Act requires the local authority to ensure that the arrangements that it puts in place for a child's education under section 19A of the 1996 Act secure a bespoke curriculum for that child that complies with the requirements in subsections (2) to (5).
123. The requirements in subsections (2) to (5) are that the curriculum for each child must:
- a. enable the child to develop in the ways described in the four purposes;
  - b. provide for appropriate progression for the child;
  - c. be suitable for the child's ability and aptitude;
  - d. be broad and balanced so far as is appropriate for the child;
  - e. provide, so far as is appropriate for the child, for teaching and learning that:
    - i. encompasses the Health and Well-being area of learning and experience;
    - ii. encompasses the mandatory element of RSE in a developmentally appropriate way; and
    - iii. develops the mandatory cross-curricular skills; and
  - f. provide, so far as is reasonably possible and appropriate, for teaching and learning in the other areas of learning and experience and the other mandatory elements.
124. The arrangements do not have to secure a curriculum for the child that encompasses all the areas of learning and experience and all the mandatory elements. The child's curriculum must encompass Health and Well-being area of learning and experience and the mandatory element of RSE, but the intention is to allow the local authority to decide what is reasonably possible and appropriate to provide for the child in terms of teaching and learning in the other areas of learning and experience and the other mandatory elements.

### **Section 54 – Review and revision**

125. This section requires a local authority that makes arrangements under section 19A of the 1996 Act to provide education for a child otherwise than at a PRU to keep those arrangements under review. The local authority must ensure that the arrangements continue to secure a curriculum for the child that complies with the requirements set out in section 53, if necessary by revising those arrangements. In considering whether the arrangements continue to secure a curriculum of that kind, the local authority must take account of information gathered from assessment arrangements implemented in relation to the child under the Act (see section 56).

### **Section 55 – Curriculum implementation**

126. This section, again, applies to a local authority that makes arrangements under section 19A of the 1996 Act to provide education for a child otherwise than at a PRU. It requires the local authority to ensure that the arrangements make sure that the curriculum for the child is implemented in accordance with the requirements set out in subsections (1) and (2).
127. These requirements include a requirement to implement the curriculum in a way that takes account of the child’s ALN (if any).

## **PART 4 ASSESSMENT AND PROGRESSION**

### **Section 56 – Duty to make provision about assessment arrangements**

128. These section requires the Welsh Ministers to make regulations about assessment arrangements. These are arrangements for assessing (by reference to the curricula prepared under Parts 2 and 3):

- the progress made by pupils and children,
- the next steps in their progression, and
- the teaching and learning needed to make that progress.

129. The Welsh Ministers will have the flexibility to determine the most appropriate assessment arrangements for maintained schools, maintained nursery schools, FNNE settings, PRUs and non-PRU EOTAS, and for the pupils and children for whom teaching and learning is provided. As mentioned above, the results of any assessments must be taken into account in considering whether a curriculum needs to be revised.

### **Section 57 – Promoting and maintaining understanding of progression**

130. This section enables the Welsh Ministers to issue directions to any of the “relevant persons” listed in section 56(4) to take specified steps to promote and maintain an understanding of progression.

## **PART 5 POST COMPULSORY EDUCATION IN MAINTAINED SCHOOLS**

131. Prior to the coming into force of this Act, the curriculum arrangements for registered pupils at maintained schools in Wales were set out in Part 7 of the Education Act 2002 (“the 2002 Act”). Part 7 of the 2002 Act applied in relation to pupils above compulsory school age (16 – 18 years old), as well as in relation to pupils aged 3 – 16.
132. This Act repeals Part 7 of the 2002 Act. The new curriculum arrangements for pupils who are 3 – 16 years old are set out in Part 2, and those for pupils who are 16 – 18 years old are set out in this Part.

### **Section 58 – Introduction and interpretation**

133. This section describes the contents of Part 5. The Part applies only in relation to pupils at maintained schools who are above compulsory school age.

### **Section 59 - General curriculum requirement**

134. This section requires the head teacher and governing body of a maintained school to ensure that the curriculum for pupils above compulsory school age is a balanced and broadly based curriculum that –

- promotes the spiritual, moral, cultural, mental and physical development of the pupils and of society, and
- prepares the pupils for the opportunities, responsibilities and experiences of later life.

135. It also requires a local authority to exercise its functions with a view to ensuring a curriculum of this kind for pupils above compulsory school age in every school that the authority maintains. And it also requires the Welsh Ministers to exercise their functions with a view to ensuring a curriculum of this kind for pupils above compulsory school age in every maintained school in Wales.

### **Section 60 - Curriculum requirement: Relationships and Sexuality Education**

136. This section requires the head teacher of a maintained school to provide teaching and learning in RSE where a pupil above compulsory school age has requested it. It also requires the governing body to exercise its functions with a view to ensuring that this teaching and learning is provided if requested.

### **Section 61 - Curriculum requirement: Religion, Values and Ethics**

137. This section requires the head teacher of a maintained school to provide teaching and learning in RVE where a pupil above compulsory school age has requested it. It also requires the governing body to exercise its functions with a view to ensuring that this teaching and learning is provided if requested.

138. Sub-section (3) requires the teaching and learning provided under this section to reflect the fact that religious traditions in Wales are mainly Christian, but also to take account of other (non-Christian) principal religions in Wales. The teaching and learning must also reflect the fact that a range of non-religious philosophical convictions (such as atheism) are held in Wales. This approach reflects the requirements of the European Convention on Human Rights (the “ECHR”).
139. Section 61 of the Act does not prevent a school from imposing a requirement that all pupils in its sixth form undertake compulsory RVE classes; nor does it prevent a school that adopts this approach from providing compulsory sixth form RVE that accords with the school’s trust deeds, or the tenets of its religion, or religious denomination (“denominational RVE”). The content of such denominational RVE remains a matter for the school.

### **Section 62 - Further curriculum requirements**

140. This section points out that there are other provisions about the curriculum for pupils in maintained schools who are above compulsory school age in sections 33A-33O in the Learning and Skills Act 2000. Those provisions require the creation of local curricula for those pupils.

## **PART 6 SUPPLEMENTARY**

### **Section 63 - Duty to have regard to mental health and emotional well-being of children and young persons**

141. This section places a duty on the persons listed in subsection (2). The duty is to have regard to the mental health and emotional well-being of children and young people, when exercising functions conferred on them by or under the Act, for instance in relation to assessment arrangements. The duty applies in relation to children and young people who are likely to be affected by the exercise of the function concerned.
142. This duty will ensure that all decisions relating to the development and implementation of a curriculum will need to be taken having regard to the impact on mental health and emotional well-being of learners. These decisions will include, for instance, decisions about the content of the curriculum, and progression.
143. The duty applies in relation to children and young people receiving EOTAS as well as in relation to children and young persons at maintained schools and maintained nursery schools, and children receiving FNNE.

### **Section 64 - Duty to promote knowledge and understanding of UN Conventions on the rights of children and persons with disabilities**

144. Section 64 imposes various requirements in respect of the UNCRC (the United Nations Convention on the Rights of the Child) and the UNCRPD (the United Nations Convention on the Rights of People with Disabilities).

145. Subsection (1) requires the head teacher and governing body of a maintained school or of a maintained nursery school to promote knowledge and understanding of the UNCRC, and the UNCRPD, among people who provide teaching and learning in respect of the school's curriculum. This would include (but not necessarily be limited to) teachers employed at the school.
146. But this duty will not apply in relation to (for instance) people who provide teaching and learning at the school that has nothing to do with the curriculum, such as in evening classes open to the local community.
147. Subsection (2) imposes an equivalent duty in the context of FNNE; in this context the duty is placed on the provider of the FNNE.
148. Subsections (3) and (4) impose equivalent duties in respect of PRUs and other EOTAS. In the context of a PRU, the duty is placed on the local authority, the management committee (if there is one) and the teacher in charge of the PRU. In the context of non-PRU EOTAS, the duty is placed upon the local authority that makes arrangements for the EOTAS.

#### **Section 65 - Duty to co-operate**

149. This section requires the persons specified in subsection (2) to seek to enter into "co-operation arrangements", either with another person specified in subsection (2), or with the governing body of a further education institution. The duty applies only if the person concerned considers that making the arrangements would facilitate the exercise of a function conferred on the person by or under the Act. If a person seeks to make arrangements with another person in compliance with this section, the second person must consider the request.
150. Co-operation arrangements under this section could for instance involve providing financial assistance, or sharing information, or exercising functions jointly (see section 5 of the Education (Wales) Measure 2011).

#### **Section 66 - Welsh Ministers' duty to facilitate the performance of functions**

151. This section requires the Welsh Ministers to exercise their functions in a way that supports the persons listed in subsection (2) in performing functions conferred on them by or under Parts 2 to 4 of the Act.
152. The reference to Parts 2 to 4 means that this duty does not apply in relation to functions conferred on a person by or under the provisions of the Act relating to post-compulsory education in maintained schools, or under Part 6 itself.

**Section 67 - Local authorities' duty to facilitate the performance of functions**

153. This section requires a local authority to exercise its functions in a way that supports the persons listed in subsection (2) in performing the functions conferred on them by or under Parts 2 to 4 of the Act. In the case of a maintained school, maintained nursery school, PRU or FNNE, the persons listed in subsection (2) are defined by reference to whether the school or PRU is maintained by the local authority, or the FNNE secured by it.
154. The section also imposes a further duty on a local authority that applies where the authority makes arrangements for a child to be provided with EOTAS, but not at a maintained school, or a maintained nursery school, or a PRU, that is maintained by the authority. The duty requires the local authority to exercise its functions in a way that supports the persons listed in subsection (5) in performing their functions conferred by or under Parts 2 to 4. This further duty reflects the fact that EOTAS may not be provided at a maintained school or PRU at all, or may be provided at a maintained school or PRU maintained by another local authority.

**Section 68 - Welsh Ministers' duty to promote access etc to Welsh medium courses of study**

155. This section requires the Welsh Ministers to promote access to courses of study taught through the medium of Welsh, and to promote the availability of such courses of study. A "course of study" for this purpose is a course of education, for example mathematics, or training, that leads to a qualification or set of qualifications approved or designated under the Qualifications Wales Act 2015. The duty applies in relation to those children to whom the Act applies, i.e. those specified in section 1 of the Act. (In practice, a "course of study" as defined is generally taken by children aged 14-16, but other, younger, children may sometimes take one.).

**Section 69 - Power to make provision for children receiving education in more than one setting etc**

156. Section 69 enables the Welsh Ministers to make regulations which make provision about teaching and learning to be provided for children who are of compulsory school age and fall within a category specified in the section. The regulations may apply provisions of the Act in relation to those children, with or without modifications.

157. Subsection (2) provides that the power applies in relation to a child who is a registered pupil at a maintained school, if the child is also provided with education at another maintained school, or at a maintained nursery school. It also applies if the child, as well as being a registered pupil at a maintained school, is receiving education at a PRU; or education provided under section 19A of the 1996 Act, but not at a PRU, a maintained school or a maintained nursery school. So this would cover, for instance, a child who is a registered pupil at a maintained school, but is also provided with some education at a PRU, perhaps because the child is being eased back into mainstream education. It would also cover a child who is a registered pupil at a maintained school, but receives some EOTAS provision at home.
158. Subsection (3) duplicates this approach in relation to a child who is a registered pupil at a maintained nursery school.
159. Subsection (4) provides that the power applies in relation to a child who is a registered pupil at a PRU, if the child is also receiving education at another PRU, or (by virtue of arrangements made under section 19A of the 1996 Act) somewhere other than a PRU, a maintained school or a maintained nursery school. An example might be a child who is receiving part-time education at a PRU as a registered pupil there, and also part-time EOTAS at home, perhaps because the child is not yet ready to undertake full time education in the PRU.
160. The intention behind subsections (2) to (4) is to enable regulations to make provision about teaching and learning for children who are registered pupils at a maintained school, maintained nursery school, or PRU, but also receiving education somewhere else, perhaps at home or in another setting.
161. Subsection (5) confers the power to specify further descriptions of children to whom section 69 is to apply.
162. This power is needed to make provision for a further category of children: those who are receiving education at only one setting (whether a maintained school, a maintained nursery school, a PRU, or under section 19A of the 1996 Act, but not in a PRU or school) but whose education in that setting is not full-time. (This might for instance be because of illness, or because a child is being eased back into education.)
163. The power conferred by this section reflects the fact that, where a child is receiving education in more than one setting, or only part-time education in one setting, it would be inappropriate for the ordinary curriculum design and implementation duties to apply in relation to a school or a PRU or EOTAS or FNNE provider in respect of the child. This is because the child will not be receiving full-time education with any school or PRU or EOTAS provider.

164. In these circumstances, flexibility will be needed to ensure that the curriculum provided for the child is appropriate, taking into account the child's needs and circumstances, and the range of providers involved – potentially any one or more of a school, a PRU, a provider of FNNE, a pupil referral unit, and another provider of education under section 19A of the 1996 Act. This will be achieved by provision in the regulations. The regulations could, for instance, require the head teacher of a maintained school and a person providing education through section 19A EOTAS at the child's home to work together to ensure that a curriculum meeting certain requirements is implemented for the child.

### **Section 70 - Power to apply Act to detained children and detained young persons**

165. This section enables the Welsh Ministers to make regulations applying, with or without modifications, provisions in the Act to detained children and detained young people in Wales. (These are children and young people detained by a court order, or by an order of recall made by the Secretary of State. An order of recall is an order recalling a young person to detention after initial release on licence.)

### **Section 71 - Duty to have regard to guidance**

166. This section requires the persons specified in subsection (3), in exercising their functions, to have regard to any guidance issued by the Welsh Ministers about the exercise of functions conferred by or under the Act.
167. Guidance given as described in this section may relate to any function conferred by or under this Act.

## **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 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.

## **SCHEDULE 1 - RELIGION, VALUES AND ETHICS**

190. Schedule 1 makes provision about teaching and learning in respect of the mandatory element of RVE.
191. Section 24 requires a curriculum to make provision for teaching and learning, in respect of the mandatory element of RVE, that accords with Part 1 of the Schedule. Section 29 (curriculum for pupils aged 3 to 14) and section 30 (curriculum for pupils aged 14 to 16) similarly require a curriculum to be implemented in a way that secures teaching and learning that accords with Part 2 of the Schedule.

## **Parts 1 and 2 - Curriculum design and implementation**

192. The requirements imposed by Parts 1 and 2 of the Schedule vary in their application to different categories of schools.

### **Community schools and foundation and voluntary schools without a religious character**

193. In the case of community schools and foundation and voluntary schools without a religious character, paragraph 2 of the Schedule requires the provision in the curriculum for teaching and learning encompassing RVE to have been designed having regard to the agreed syllabus. (The “agreed syllabus” in the context of the Schedule is the RVE syllabus adopted by the local authority under section 375A of the 1996 Act for use in schools maintained by the authority.)
194. Paragraph 6 of the Schedule requires this RVE provision to be implemented for all pupils.

### **Foundation and voluntary controlled schools that have a religious character**

195. In the case of foundation and voluntary controlled schools with a religious character, paragraph 3 of the Schedule requires the provision in the curriculum for teaching and learning encompassing RVE to have been designed having regard to the agreed syllabus.
196. However, in the case of these schools, there is an additional requirement (see paragraph 3(3) and (4) of the Schedule). This additional requirement applies only if the provision that has been designed having regard to the agreed syllabus does not accord with the school’s trust deed, or the tenets of its religion or religious denomination.
197. (The first step in determining whether this additional requirement applies will be to consider whether the provision designed having regard to the agreed syllabus accords with any provision in the school’s trust deed that relates to teaching and learning in respect of RVE. If there is not any provision in the trust deed that relates to teaching and learning in respect of RVE, the next step will be to consider whether the provision accords with the tenets of the religion or denomination specified in relation to the school by an order under section 68A of the 1998 Act. Only if the provision does not accord with the trust deed or the relevant tenets will the additional requirement apply.)
198. If this additional requirement applies, the school’s curriculum must also include provision for RVE that does accord with the school’s trust deed, or the tenets of its religion or religious denomination.
199. Paragraph 7(2) of the Schedule requires the teaching and learning secured for pupils to be that for which provision has been made in the curriculum under paragraph 3(2) of the Schedule (i.e. the provision designed having regard to the agreed syllabus).
200. But there is an exception to this general requirement. Paragraph 7(4) of the Schedule enables a pupil’s parents to request that their child be provided, instead, with the teaching and learning for which the curriculum makes provision under paragraph 3(4) of the Schedule (i.e. the additional provision that accords with the school’s trust deed, or the tenets of its religion or denomination. If a request of this type is made, it must be complied with.

### **Voluntary aided schools that have a religious character**

201. In the case of voluntary aided schools with a religious character, paragraph 4(2) of the Schedule requires the curriculum to make provision for teaching and learning in respect of RVE that accords with the school's trust deed or the tenets of its religion or denomination.
202. Again, there is an additional requirement (see paragraph 4(3) and 4(4) of the Schedule). For schools of this type, the additional requirement applies only if the provision that has been designed under paragraph 4(2) (i.e. which accords with the trust deed or tenets of the school's religion or denomination) does not accord with the agreed syllabus. In this case, the school's curriculum must also include provision for RVE that has been designed having regard to the agreed syllabus.
203. Paragraph 8(2) of the Schedule requires the teaching and learning secured for pupils to be that for which provision has been made in the curriculum under paragraph 4(2) of the Schedule (i.e. the provision that accords with the school's trust deed or its religion or denomination).
204. But again there is an exception to this general requirement. Paragraph 8(3) and (4) of the Schedule enable a pupil's parents to request that their child be provided, instead, with the teaching and learning for which the curriculum makes provision under paragraph 4(4) (i.e. with the additional provision designed having regard to the agreed syllabus). If a request of this type is made, it must be complied with.

### **Part 3 – Interpretation**

205. Part 3 explains what is meant by schools having a "religious character" (since this is a concept applied in the Schedule) and for this purpose refers to section 68A of the 1998 Act as inserted by Schedule 2 to the Act.

## **SCHEDULE 2 - MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS**

### *Education Act 1996*

206. Paragraphs 2-4, 21, 25, 47-50, 52-55 and 64-65 of Schedule 2 make minor and consequential amendments in relation to the provision of education otherwise than at school, including at PRUs.
207. Paragraph 3 amends section 19 of the 1996 Act (exceptional provision of education in pupil referral units or elsewhere) so that it applies to England only.
208. Paragraph 4 inserts section 19A into the 1996 Act. This section applies in relation to Wales only. It requires local authorities in Wales to make arrangements for suitable education at school or otherwise than at school for children of compulsory school age within the local authority's area who, by reason of illness, exclusion from school or otherwise, may not receive suitable education for a period unless such arrangements are made for them.

209. Paragraph 6 amends section 375 of the 1996 Act (agreed syllabuses of religious education) so that it applies to England only.
210. Paragraph 7 inserts section 375A into the 1996 Act. This section applies in relation to Wales only. It places a duty on each local authority in Wales to adopt a syllabus of RVE for use in the schools it maintains. The new section also introduces, in relation to Wales, Schedule 31 of the 1996 Act, which establishes the constitution and functions of agreed syllabus conferences convened by local authorities.
211. Section 375A of the 1996 Act allows the agreed syllabus for RVE to make different provision for different types of schools and learners. The syllabus must reflect the fact that religious tradition in Wales are mainly Christian. It must also take account of the teaching and practices of the other principal religions represented in Wales and the fact that a range of non-religious philosophical convictions are held in Wales.
212. Paragraphs 8 to 11 make amendments to sections 390-392 of the 1996 Act, which relate to the constitution and functions of standing advisory councils, so that they apply in relation to the provision of RVE in Wales (as well as in relation to the provision of RE in England).
213. Paragraph 9 amends section 390 of the 1996 Act (constitution of advisory councils). The effect is that, where a local authority in Wales constitutes a standing advisory council on RVE, it must appoint a group of persons to represent Christian denominations, other religions and denominations, and non-religious philosophical convictions to its standing advisory council. The local authority must take all reasonable steps to secure that the membership of the group is numerically proportionate to the strength of each religion, denomination, or conviction in its local area (see the new subsection (6A) and (6B) of section 390 inserted by paragraph 9(8) of the Schedule.).
214. The local authority will, in addition, need to appoint groups of persons to the standing advisory council to represent the local authority and teachers: this requirement is already provided for in the 1996 Act and is not altered by the Act.
215. Paragraph 9 of the Schedule further amends section 390 of the 1996 Act so as to include a duty on a local authority in Wales to have regard to any guidance given by the Welsh Ministers when exercising its functions under section 390.

216. Paragraph 10 inserts subsection (1A) into section 391 of the 1996 Act (functions of advisory councils). This subsection sets out the purposes for which a local authority in Wales must constitute a standing advisory council. These include the provision of advice to the local authority about the teaching and learning to be provided in respect of the mandatory element of RVE, and in respect of RVE provided on request to the post-compulsory education age group (school years 12 and 13) under section 60. (The content of RVE provided by schools with a religious character in accordance Schedule 1 to this Act and which accords with their trust deeds, tenets of their religion, or religious denomination remains a matter for the school.)
217. Paragraph 13 amends section 396 of the 1996 Act (power to direct advisory council to revoke determination or discharge duty) so that it applies to England only.
218. Paragraph 14 inserts section 396A into the 1996 Act. This section applies in relation to Wales only. It gives the Welsh Ministers a power to direct a standing advisory council constituted by a local authority in Wales to revoke a determination made under section 394 or 395 of the 1996 Act, or to discharge a duty imposed on a standing advisory council under those sections. Section 394 of the 1996 Act requires standing advisory councils to determine applications made by the head teacher of a community school, or a voluntary school without a religious character, for the requirement for Christian collective worship not to apply to the school (or to a class or description of pupils at the school); and section 395 of the 1996 Act requires standing advisory councils to review those determinations.
219. Paragraph 15 amends section 397 of the 1996 Act (religious education: access to meetings and documents) in order to make it clear that the power to make regulations about the meetings and documents of standing advisory councils constituted by local authorities in Wales and agreed syllabus conferences convened by local authorities in Wales rests with the Welsh Ministers.
220. Paragraph 16 amends section 399 of the 1996 Act (determination of question whether religious education is in accordance with trust deed) so that the section applies in relation to RVE provision at a foundation or voluntary school in Wales in the same way that it applies in relation to RE at a foundation or voluntary school in England.
221. Paragraphs 17 to 20 of Schedule 1 amend sections 403 – 405, which relate to sex education, so that they apply to England only.
222. Paragraph 22 inserts references to section 397 of the 1996 Act, and paragraphs 6B and 6C of Schedule 1 to that Act, into section 569 of that Act. Section 569 sets out the legislative procedures for regulations made under the 1996 Act.

223. Paragraphs 23 and 24 make technical amendments to section 579 (general interpretation) and section 580 (index). That includes updating the entry for “agreed syllabus” in the index of defined terms so that it lists separately the Wales-only provision in section 375A(7) and the England-only provision in section 375(2) and (4).
224. Paragraph 25 amends Schedule 1 to the 1996 Act, which relates to PRUs. It inserts paragraphs 6A-6D into that Schedule: these paragraphs apply in relation to PRUs maintained by a local authority in Wales.
225. Paragraph 6B(1) of Schedule 1 to the 1996 Act places duties on the local authority, the management committee (if there is one) and the teacher in charge of a PRU in relation to the curriculum for registered pupils at the PRU. Specifically, it requires them to exercise their functions in relation to pupils of compulsory school age in accordance with sections 50 to 52 of this Act. It also requires them to exercise their functions in relation to pupils above compulsory school age with a view to securing that the curriculum for those pupils meets the requirements specified in paragraph 6B(2) of Schedule 1 to the 1996 Act.
226. Paragraphs 6B(3) and 6C of Schedule 1 to the 1996 Act enable the Welsh Ministers to make regulations about the provision of a curriculum for pupils above compulsory school age at PRUs, and also regulations requiring local authorities, management committees and teachers in charge of PRUs to exercise specified functions in relation to the curriculum, in collaboration or otherwise.
227. Paragraph 6D of Schedule 1 to the 1996 Act requires each local authority in Wales to make arrangements for dealing with certain curriculum-related complaints, including complaints relating to the exercise of functions under section 50, 51 or 52 of this Act. Paragraph 6D(2) of Schedule 1 to the 1996 Act prevents the Welsh Ministers from exercising their intervention powers under Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 in relation to such complaints unless the complaints have been made, and dealt with, under the local authority arrangements.
228. Paragraph 25(5) amends paragraph 8 of Schedule 1 to the 1996 Act so that it applies to England only. It also inserts a new sub-paragraph which provides that sections 406 and 407 of the 1996 Act apply in relation to PRUs in Wales. Those sections make provision to prohibit political indoctrination and to ensure a balanced treatment of political issues.
229. Paragraph 26 amends Schedule 31 of the 1996 Act. The Schedule, as amended, makes provision about agreed syllabuses of RE (in England) and RVE (in Wales).

230. Paragraph 26(4) amends Schedule 31 to the 1996 Act so as to require a local authority in Wales that convenes an agreed syllabus conference to appoint a committee of persons to the conference to represent Christian denominations, other religions and denominations, and non-religious philosophical convictions. The local authority must take all reasonable steps to secure that the membership of the committee is numerically proportionate to the strength of each religion, denomination, or conviction in its local area (see the new paragraph 4(5) and (6) of Schedule 31 to the 1996 Act inserted by paragraph 26(6)).
231. Paragraph 26(9) inserts paragraph 9A into Schedule 31 to the 1996 Act. Paragraph 9A set out the conditions that must be met before a local authority in Wales may adopt its first agreed syllabus for RVE under section 375A of the 1996 Act. It specifies the circumstances where by the Welsh Ministers would be required to take action (see paragraph 12 of Schedule 31) in the event of those conditions for adoption not being met.
232. Paragraph 26(10) inserts sub-paragraphs (2A) to (2D) into paragraph 10 of Schedule 31 to the 1996 Act. Sub-paragraphs (2B) and (2C) set out the conditions that must be met before a local authority in Wales may give effect to the recommendations made by an agreed syllabus conference that has been convened to reconsider an agreed syllabus.
233. Paragraph 26(11) inserts sub-paragraph (1A) into paragraph 12 of Schedule 31 to the 1996 Act. This sub-paragraph states that, where required by paragraph 9A or 10 of that Schedule, the Welsh Ministers must appoint a group of people with relevant experience to prepare their RVE syllabus.
234. Paragraph 26(12) and (13) amends paragraphs 13 and 14 of Schedule 31 to the 1996 Act to take account of the different requirements for agreed syllabuses in Wales and in England.
235. Paragraph 26(14) inserts paragraph 14A into Schedule 31 to the 1996 Act. Paragraph 14A requires the persons specified in that paragraph to have regard to any guidance given by the Welsh Ministers when exercising their functions under the Schedule.

*Education Act 1997*

236. Paragraphs 27 and 28 amend section 56 of the Education Act 1997 in order to clarify the circumstances in which the Welsh Ministers may make regulations under that Act.

*School Standards and Framework Act 1998*

237. Paragraph 33 inserts section 68A into Chapter 6 of the 1998 Act. This section gives the Welsh Ministers the power to designate foundation or voluntary schools in Wales as having a religious character. The Welsh Ministers previously had the power to do so under section 69(3) of the 1998 Act, but that section now applies in relation to England only.

238. Section 68A of the 1998 Act provides for existing designations made under section 69(3) of that Act to continue to have effect, but to be treated as though they were made under the new section. This is to ensure clarity and continuity for those schools already designated as having a religious character.
239. Section 68A(3) of the 1998 Act provides the Welsh Ministers with a power to make regulations setting out the procedure for designation.
240. Paragraphs 34 and 35 amend section 69 of the 1998 Act (and the italic heading before it) so that they apply to England only.
241. Paragraph 36 amends section 71(1) of the 1998 Act so that the parental right to withdraw a child from RE applies to England only. No amendment is made to section 71(1A) and (1B) of that Act, which confer a parental right to withdraw a child of compulsory school age from religious worship and a right for post-16 pupils to withdraw themselves from religious worship.
242. The Act makes no amendment to section 71(3) of the 1998 Act. The result is that if a pupil in Wales is withdrawn from religious worship the pupil may also be withdrawn from school as described in section 71(3) of that Act. In practice, this means that if a pupil is withdrawn from attendance at religious worship, and the conditions in section 71(3)(a) to (c) are satisfied, that pupil may also be withdrawn from school in order to receive RE elsewhere (subject to the limitation in section 71(4)).
243. The provision of RE for a pupil under section 71(3) of the 1998 Act does not affect the requirement under Part 2 of this Act to provide teaching and learning for the pupil that encompasses RVE. The requirement to provide that teaching and learning continues to apply in relation to the pupil, and any RE provided for the pupil under section 71(3) of the 1998 Act must be in addition (rather than instead of) the teaching and learning provided in respect of RVE.
244. Paragraph 36(5) inserts sub-section (7A) into section 71 of the 1998 Act. This subsection requires the Welsh Ministers to make regulations to ensure that, so far as is practicable, every community or foundation special school pupil in Wales attends religious worship unless withdrawn in accordance with the wishes of the pupil's parent or, in the case of a post-16 pupil, in accordance with the pupil's own wishes. These regulations are subject to the negative procedure as a result of the amendment made to section 138A of the 1998 Act by paragraph 38 of this Schedule.

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

245. Paragraph 37 amends section 124B of the 1998 Act which makes provision in relation to the designation of independent schools as having a religious character. It inserts a new subsection (A1) into section 124B of the 1998 Act, so as to apply subsections 68A(1) and (3) of that Act to independent schools in the same way as those subsections apply to voluntary and foundation schools in Wales. This means that independent schools can be designated by an order made by the Welsh Ministers as independent schools with a religious character. Section 68A(2) of the 1998 Act is not applied to independent schools by paragraph 37, as the same effect is achieved by section 124B(2) of the 1998 Act (as amended by paragraph 37(4)) in relation to designation orders that designate independent schools.
246. Paragraphs 12, 29-32, 34, 38-43, 51, 62-65 and 68-69 make minor and consequential amendments in relation to the designation of schools with a religious character. The majority of these paragraphs amend provisions in primary legislation so as to substitute references to repealed or amended provisions with references to the provisions inserted by equivalent provisions in Schedule 2 of this Act.
247. Paragraph 42 makes amendments to Schedule 19 of the 1998 Act so that it applies to England only.

*Education Act 2002*

248. Paragraphs 45 and 46 repeal Part 7 of the 2002 Act and make consequential changes to that Act in connection with that repeal.
249. Paragraphs 46, 57 and 61 contain minor and consequential amendments required as a result of the repeal of Part 7 of the 2002 Act.

*Additional Learning Needs and Education Tribunal (Wales) Act 2018*

250. Section 14 of the Additional Learning Needs and Education Tribunals (Wales) Act 2018 (“the 2018 Act”) places a duty on local authorities to prepare and maintain an individual development plan (IDP) for a child or young person the authority has decided has additional learning needs. Where a pupil at a maintained school has an IDP prepared by the local authority that includes provision disapplying or modifying any curriculum implementation requirements under the Act (see section 41), paragraph 74 of this Schedule prohibits the local authority from directing the governing body of the school to prepare or maintain an IDP for the pupil.
251. Paragraph 75 of Schedule 2 makes a minor amendment to Schedule 1 to the 2018 Act by repealing an amendment to section 19 of the 1996 Act. This amendment is no longer required as a result of the amendments made by paragraph 3, which restrict the application of section 19 of the 1996 Act to England only.

## **RECORD OF PROCEEDINGS IN SENEDD CYMRU**

252. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd's website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=28836>

<b>Stage</b>	<b>Date</b>
Introduced	6 July 2020
Stage 1 - Debate	15 December 2020
Stage 2 Scrutiny Committee - consideration of amendments	29 January 2021
Stage 3 Plenary - consideration of amendments	2 March 2021
Stage 4 Approved by the Senedd	9 March 2021
Royal Assent	29 April 2021