

Explanatory Memorandum to the Curriculum for Wales' Relationships and Sexuality Education (RSE) Code

This Explanatory Memorandum has been prepared by the Welsh Government's Education Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected realisation of Relationships and Sexuality Education (RSE) within the Curriculum for Wales. I am satisfied the benefits justify the likely costs.

Jeremy Miles AS/MS
Minister for Education and Welsh Language

23 November 2021

PART 1 – Explanatory Memorandum

1. Description

- 1.1 Pursuant to section 8 of the Curriculum and Assessment (Wales) Act 2021 (the Act) the Relationships and Sexuality Education (RSE) Code sets out the themes and matters to be encompassed by the mandatory element of RSE.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 No specific matters identified.

3. Legislative background

- 3.1 The Code is issued pursuant to section 8 of the Act.
- 3.2 Section 77(2) of the Act, provides the Welsh Ministers must before issuing or revising the RSE Code:
- a) consult such persons as they think appropriate
 - b) lay before the Senedd a draft of the proposed Code (or revisions of the proposed Code).
- 3.3 Under section 8(2) and (3) of the Act a curriculum does not encompass RSE unless it accords with the provision in the RSE Code. Teaching and learning also does not encompass the mandatory element of RSE unless it accords with the provision in the RSE Code.
- 3.4 Sections 24(2) (maintained schools and funded non-maintained nursery settings), 50(4) (education other than at a school (“EOTAS”)) and section 53(4) (non-PRU EOTAS) of the Act provide that the RSE must be developmentally appropriate for pupils.
- 3.5 RSE will be taught across the curriculum and the Act requires schools to encompass the core learning, as set out in the RSE code, in their curricular.

4. Purpose and intended effect of the legislation

- 4.1 The purpose and intended effect of the RSE Code relate directly to that set out in the Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) for the Act.

- 4.2 In summary, section 8(1) of the Act requires the Welsh Ministers to issue a Code setting out the mandatory themes and matters for RSE. This means areas that must be covered by schools, learners receiving EOTAS and funded non-maintained nursery settings in the teaching and learning for this specific mandatory element.

Background

- 4.3 The Curriculum for Wales Framework was published on 28 January 2020. Before its publication, the Framework was subject to broad and extensive consultation. Feedback received signalled what specific, additional guidance schools and settings would require in order to successfully design and realise their own curriculum. The framework will consist of a number of guidance documents designed to assist schools and other settings design their curricula.
- 4.4 Relationships and Sexuality Education (RSE) is a statutory requirement in the Curriculum for Wales Framework and is mandatory for all learners from age 3-16. It is part of the wider area of learning and experience (Area) for Health and well-being, but is also cross-cutting: drawing on different areas of learning and experience and subject disciplines.
- 4.5 This mandatory RSE Code supports schools to design their RSE. The content is set within the context of broad learning strands that are interlinked:
- 4.5.1 Relationships and identity;
 - 4.5.2 Sexual health and well-being;
 - 4.5.3 Empowerment, safety and respect.
- 4.6 These strands allow practitioners to design and develop a curriculum tailored to their learners, making connections and developing authentic contexts for learning across the curriculum.
- 4.7 RSE has a positive and protective role in learners' education. Schools and settings have an important role to play in creating safe and empowering environments in supporting learners' rights to enjoy fulfilling, healthy and safe relationships throughout their lives.
- 4.8 Helping learners to form and maintain a range of relationships, based on mutual trust and respect is the foundation of RSE. These relationships are critical to the development of emotional well-being, resilience and empathy. An understanding of sexuality with an emphasis on rights, health, equality and equity enables learners to develop relationships that are fully inclusive, reflecting diversity and promoting respect.
- 4.9 RSE forms one of the Curriculum for Wales framework's cross-cutting themes. That section of the framework will incorporate the mandatory RSE Code.

4.10 The framework will also contain statutory RSE guidance published under section 71 of the Act. That guidance will provide support in developing RSE in a curriculum both as a mandatory learning area in its own right, and also as a cross-cutting theme spanning all areas of learning and experience.

5. Consultation

- 5.1 Section 77(2) of the Act, provides the Welsh Ministers must before issuing or revising the RSE Code consult such persons as they think appropriate (if any) before issuing or revising the RSE Code.
- 5.2 An 8 week formal consultation ran from 21 May to 16 July 2021 on the draft Code and associated draft guidance. This timing was to ensure the consultation period both avoided Senedd elections and was completed before the end of the academic year. The consultation was promoted to a wide audience of key stakeholders including schools, local authorities, regional consortia, the Children’s Commissioner for Wales, children’s groups, Estyn, teacher unions and wider stakeholders.
- 5.3 Over 850 responses were received through the consultation process. A number of these responses were detailed submissions. The [consultation documents and summaries of the responses](#) are available online.
- 5.4 In summary, there was broad support for RSE from both stakeholders, practitioners, alongside some suggestions for improvement. Across responses, both within formal submissions and through focus groups, respondents raised a diverse range of views and perspectives. This includes views towards the guidance itself, as well as broader observations and perspectives on education and RSE.
- 5.5 Refinement of the draft RSE statutory guidance and Code has been informed by feedback from the public consultation and the expectations as outlined by Welsh Government. Alongside this, evidence from a range of experts and stakeholders was carefully considered and reflected upon.
- 5.6 The RSE guidance and Code has been developed by practitioners through a process of co-construction that has been supported by other experts and stakeholders. The feedback from the consultation phase formed part of the co-construction process and has led to further refinement of the guidance and Code.
- 5.7 This section explains changes to the draft Code where they differ from the consultation version.

Within the statutory guidance:

- More detailed narrative provided on the ‘why’ of RSE, reinforcing the importance of this area of the curriculum;

- Strengthened aspects of the narrative on ‘Rights and equity’ to ensure this is at the heart of a school’s approach and include relevant UNCRC articles;
- Further developed and defined principles for RSE;
- Ensured that safeguarding principles and content, both online and offline, are clear with links to existing legislation and guidance;
- Expanded the principle relating to involving parents, carers and the wider school community in the development of RSE provision;
- Signalled the ‘whole school approach’ in a way which will be helpful to schools and to provide clear links with any future guidance in this area;
- Revised the legal requirements section ensuring it is clearer;
- Re-visited all glossary definitions;
- Ensured purpose and status of the Code is completely clear to schools;
- Provided detail on how each Area of Learning and Experience can support effective RSE.

Within the RSE Code:

- Clearer references to associated pedagogy;
- Included clearer references to friendships;
- Provided more detail within each strand;
- Ensured LGBTQ+ aspects are sufficiently clear and emphasised;
- Included sufficient detail on “Reproductive health” so that it is clearer for practitioners;
- Reviewed the overall developmental appropriateness of elements and amended the typical ages at which learners should engage with the phases set out in the Code.

Relationships and Sexuality Education Pilot

- 5.8 In addition to formal consultations on proposals, the Welsh Government set out to explore the views and perspectives of RSE with school communities and other stakeholders through a range of activities. This included a pilot across a selection of schools within a single Local Authority in Wales.
- 5.9 The pilot commenced during the autumn term, and continues until February 2022. It is gathering views and perceptions of schools and practitioners towards the draft RSE guidance and Code which fed into the refinement work. Wider feedback was also captured which is now informing policy, programme, professional learning and resource development.
- 5.10 Participating schools were generally supportive of the Curriculum for Wales, and the approach to RSE in particular. This included the orientation of the new curriculum, including the greater focus of learner well-being, the importance of learner rights, as well as the underlying pedagogical principles underscoring the approach.

Wider consultative work

- 5.11 A range of consultations relating to the Curriculum for Wales have also considered RSE. A summary of the relevant consultations are listed below for reference.

Our National Mission: A Transformational Curriculum - Proposals for a new legislative framework

- 5.12 Published in January 2019, the White Paper consultation sought views on the proposals for legislation on the structure of the new curriculum framework, with the four purposes at its core, the six areas of learning and experience, the Welsh and English languages, RSE and Religion, Values and Ethics. It also set out wider intentions for learner assessment and the evaluation of schools. 2,000 responses were received to the consultation from education professionals, the third sector, interest groups and members of the public. [See link](#) for the report on the summary of responses developed by Arad Research.

Draft guidance on relationships and sexuality education

- 5.13 The consultation sought views on revised guidance for schools in order to provide more comprehensive support for teachers. The draft guidance, published for consultation in February 2019, put forward proposals to:
- change the name of the area of study from 'Sex and Relationships Education' to 'Relationships and Sexuality Education' (RSE);
 - support schools to structure RSE more closely to the way it will work in the new curriculum; and
 - promote a 'whole school approach' which links provision, policy, staff and community to RSE.

Draft Curriculum for Wales 2022

- 5.14 In April 2019 the draft guidance on the new Curriculum was published for public consultation. The guidance was set out in a series of sections outlining the proposed content of guidance on the areas of learning and experience. To supplement this process, Dynamix was commissioned to seek feedback from children and young people. They employed three methods to do this: they developed an on-line feedback form; held 24 focus groups, including, primary, secondary and protected characteristic groups; and produced a toolkit for youth leaders to use to gather opinions with their groups.

5.15 The consultation was intended to support and inform ongoing efforts to refine and improve the curriculum before it was rolled out in classrooms from 2022. The focus was on the wider curriculum, in particular the documentation to support it, rather than the legislative framework. The report setting out analysis by Dynamix of the feedback from children and young people is available on the Welsh Government website.

Ensuring Access to the Full Curriculum

5.16 This consultation, published in October 2019, sought views on the practical implications on the proposal to ensure access to the new curriculum by not including in the Act provisions to enable parental right to withdraw from religious education and RSE. It also sought views on potential name changes for religious education, which would be more descriptive of the teaching and learning in the subject.

<https://gov.wales/ensuring-access-full-curriculum>

Part 2 – Regulatory Impact Assessment (RIA)

6 RIA Overview

- 6.1 The RSE Code will form an integral part of the Curriculum for Wales Framework which, alongside other duties and requirements placed on schools and settings under the Act, give clarity and national expectations on how a curriculum must be developed.
- 6.2 Detailed information on the costs, benefits and risks associated with the process of curriculum reform and the RSE element of the curriculum has been undertaken. This is set out in the recently updated Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) for the Act published in April 2021. The Welsh Government has also committed to update the RIA by the end of 2021.

Impact Assessments

- 6.3 The process of impact assessment in respect of Curriculum for Wales, including RSE is ongoing. Consequently there is already a range of published and, in some cases, recently updated impact assessments relating both directly and indirectly to the requirements on schools and settings set out in these Codes. These include:
- In April 2021 detailed information on the costs, benefits and risks associated with the process of curriculum reform both system-wide and for schools and settings was published in the Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) for the Act.
 - The integrated impact assessment on the Curriculum for Wales guidance – which includes RSE published in January 2020.
 - An integrated impact assessment of how proposals for Curriculum and Assessment legislation would impact teaching and learning was published in July 2020.
 - Ensuring access to the full curriculum children’s rights impact assessment published in July 2020.
 - Curriculum for Wales children’s right impact assessment published in July 2020.
 - The justice system impact identification form published in April 2018.

7. Options

- 7.1 Options regarding the status of the RSE Statutory Guidance and Code was considered by Ministers (and debated by Members of the Senedd) as part of

the passage of the Act in 2020 through to 2021. Consequently this is covered by the EM and RIA for the Act.

- 7.2 It's important that learners are educated in a way that contributes to developing ethical informed citizens who 'understand and exercise their human and democratic responsibilities and rights' and 'respect the needs and rights of others, as a member of a diverse society'. The curriculum is designed as a continuum for all learners from 3-16 and the policy will primarily affect this age group.
- 7.3 Part of the rationale for including RSE as a mandatory element in the new curriculum is the importance of its contribution to the four purposes; it is unlikely that some of the key characteristics could be secured by learners without access to RSE.
- 7.4 Feedback on the extensive 2019 consultation on draft Curriculum for Wales guidance (see: [Curriculum for Wales 2022: guidance | GOV.WALES](#)) suggested there should be more detailed guidance should be published for RSE given this area of the curriculum will be statutory, and given the sensitive and specialist nature of the subject area.
- 7.5 For this reason, the detailed statutory guidance and RSE Code developed will help schools to plan provision which is appropriate and accessible for their learners.

Options considered during the passage of the Curriculum and Assessment (Wales) Act

Option 1: Have no code

- An option to not have an RSE code would potentially result in a lack of guidance, clarity and detail for schools and settings which is required whilst designing their RSE curriculum. Potentially, important issues could be overlooked and learners would miss out on vital learning. It could also give rise to inconsistency in the approach and delivery of RSE across Wales.

Option 2: Rely on statutory guidance

- The RSE statutory guidance sets out detail schools and settings must consider whilst designing the mandatory area of RSE. Whilst it will state the requirement that learning must be developmentally appropriate, it does not set out the core learning to be delivered and when.

Option 3: Have a code

- The agreed option was to include a requirement within the Act for the Welsh Ministers to publish an RSE code setting out the core learning to be undertaken in RSE. This means areas that must be covered by schools and funded non-maintained settings in the teaching and learning for this specific mandatory element.

- It is important to note that removal of the right to withdraw for RSE was not intended to replace parents' vital role in educating their children. Importance of the RSE code is to make it clear that the developmentally appropriate learning through RSE must be provided sensitively and inclusively to complement it. The RSE code provides clarity for schools, parents/carers and learners ensuring there is consistency in delivery of RSE across all schools in Wales.

8. Costs and benefits

- 8.1 As set out in section 6 above, no separate cost and benefit analysis has been undertaken specific to the elements of the Curriculum for Wales Framework set out in the RSE Code. However, we do not envisage any additional costs to the education system will arise from the Code over and above that set out in the RIA.
- 8.3 Without the Code, schools and settings would have less clarity and assurance whilst designing the RSE element of their curriculum.

9. Competition Assessment

- 9.1 The competition filter test:

Question	Answer Yes or No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

- 9.2 The provisions within the draft Code will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.
- 9.3 The provisions in the draft Code is not expected to have any impact on competition or place any restrictions on new or existing suppliers. As set out in the RIA referenced at paragraph 6.3, the majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.
- 9.4 The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

10. Post implementation review

- 10.1 Implementation of the Code in schools and settings will take place from September 2022 through to the 2026/27 academic year as the Curriculum for Wales is rolled out across schools and settings. Review of their implementation forms part of the wider implementation review set out in the RIA referenced at paragraph 6.3 above.
- 10.2 The wider programme of evaluation of the curriculum reforms (see: [Curriculum for Wales: Implementation plan - Hwb \(gov.wales\)](#)) is not designed as a single backward-looking assessment of impacts but rather an ongoing process of learning, of which an evaluation of impacts will form an important part. An impact evaluation will look at the consequences of reforms as they take their effect and after a sufficient period to allow longer term outcomes to emerge.