

## **Explanatory Memorandum to the Education (Arrangements for Assessing in the Curriculum for Wales) Regulations 2022**

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 impact of Assessment Arrangements.

**Jeremy Miles AS/MS**  
**Minister for Education and Welsh Language**

11 January 2022

# **PART 1 – Explanatory Memorandum**

## **1. Description**

1.1 The Education (Arrangements for Assessing in the Curriculum for Wales) Regulations 2022 (“the 2022 Regulations”) place statutory duties on schools and other settings to ensure the persons set out in the 2022 Regulations make, implement, review and revise assessment arrangements as part of their design and planning of a curriculum under the new Curriculum for Wales Framework.

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

2.1 None

## **2 Legislative background**

3.1 The 2021 Act was passed in the Senedd on 9<sup>th</sup> March 2021 and received Royal Assent on 29 April 2021.

3.2 The 2021 Act establishes a legislative framework to support the implementation of the new purpose led curriculum and assessment arrangements for Wales, due to come into force in a phased way from 1<sup>st</sup> September 2022.

3.3 The 2022 Regulations are being made under sections 56 and 75 of the 2021 Act, to place a duty on the persons set out in the Regulations to make, implement and review assessment arrangements for an adopted, secured or revised Curriculum under CfW. Section 56 requires the Welsh Ministers to make provision about assessment arrangements.

3.4 “Assessment arrangements” are defined under section 56(2) of the 2021 Act as:

Arrangements for assessing in relation to the relevant curriculum –

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

## **Procedure**

3.5 The 2022 Regulations are made under the negative resolution procedure.

## 4 Purpose and intended effect of the legislation

- 4.1 The purpose and intended effect of the 2022 Regulations relate directly to that set out in the [Explanatory Memorandum \(EM\) and Regulatory Impact Assessment](#) (RIA) for the 2021 Act.

The 2022 Regulations will come into force in a phased manner beginning on 1<sup>st</sup> September 2022.

- 4.2 The [Supporting Learner Progression: Assessment guidance](#) originally published on 28 January 2020 outlines the key principles and purpose of assessment within Curriculum for Wales (CfW). It provides a clear direction and the guiding principles for schools and settings to follow when developing their assessment arrangements alongside designing their curriculum. The guidance also covers the key processes needed for effective learner progression, namely:

- ensuring a shared understanding of progression
- transition along the 3 to 16 continuum
- communicating and engaging with parents/carers

- 4.3 The Guidance needs to be updated to reflect commitments made by Welsh Ministers during the passage of the Curriculum and Assessment (Wales) Act 2021 (the 2021 Act) earlier in 2021, as well as consultation feedback in autumn 2021. The Guidance will be updated and published on 10 January 2022 and will become statutory under section 71 of the 2021 Act.

- 4.4 Welsh Government is updating the Guidance in line with the 2022 Regulations to allow schools and settings greater time to draw on that advice to inform the making of their assessment arrangements alongside their curriculum design and planning through the 2021/22 academic year.

- 4.5 The Regulations set out the detail for assessing the progress of learners in relation to the relevant curriculum within a maintained school, a maintained nursery school, a Funded Non-Maintained Nursery education setting (FNNE), a Pupil Referral Unit (PRU) or where Education is provided for other than at school (EOTAS) except at a PRU. The meaning of “relevant curriculum” is given in section 56(5) of the 2021 Act.

- 4.6 The 2021 Act allows for 2022 Regulations in respect of assessment arrangements to include: detail on the implementation of assessment arrangements, including when, how and who should make and implement them; the criteria that the arrangements must meet; the need to evaluate the effectiveness of the assessment arrangements and how this should be carried out; and review and revision processes for assessment arrangements. The 2022 Regulations make such provision.

- 4.7 The 2021 Act also allows for the 2022 Regulations on assessment arrangements to include requirements around the provision of information (by the relevant person) about assessment arrangements made or implemented. It was intended that this would allow for Regulations to require the publication of assessment arrangements to mirror those for publishing a summary of a curriculum. At this point in time, in order to limit the administrative requirements placed on schools during the initial stage of roll-out, we are not proposing to use this provision.
- 4.8 The 2021 Act includes provision around placing requirements on schools to publish a summary of a curriculum, details of these requirements are being considered and we expect these to include reference to assessment arrangements for initial years of the curriculum roll-out.

### Commencement

- 4.9 CfW is being rolled out in a phased approach across the 2022/23 to 2026/27 academic years. Regulation 1 provides for the commencement of the assessment arrangements by year groups, to mirror the planned roll out of the CfW.

### On-going Assessment throughout the school year

- 4.10 The purpose of assessment arrangements within CfW is to understand and support the progress of a child or learner through the school's or setting's curriculum and to help determine their next steps in teaching and learning to progress. Assessment arrangements are intended to support every learner to make progress by supporting practitioner's understanding of the individual learner's needs and using that understanding to help plan teaching and learning and the next steps in their progression so that they are supported and challenged accordingly.
- 4.11 In order to effectively support learner progress, assessment needs to be embedded into day to day practice. Assessment under CfW is integral to learning and teaching with practitioners using the information gained from assessment to consider how to tailor teaching to ensure a child is progressing and using that information to inform next steps in learning.
- 4.12 Regulation 3 of the 2022 Regulations places a duty on the head teacher of a maintained school or a maintained nursery school, the provider FNNE, the teacher in charge, the management committee and the local authority of a PRU and the local authority providing EOTAs outside a PRU, to make assessment arrangements which are suitable for learners or children of differing ages, abilities and aptitudes, which provide for the on-going assessment of learners throughout the school year, with the intended effect of supporting learner progression.
- 4.13 Assessment arrangements are an intrinsic part of Curriculum Design, with information from assessment arrangements used to inform teaching and learning and next steps to support learner progression. To ensure that the

assessment arrangements that are put in place and the information derived from these supports an understanding of progress within the Curriculum, the 2022 Regulations require that planning and making assessment arrangements for a school or setting's curriculum is done alongside Curriculum Design.

- 4.14 Regulation 3(6) of the 2022 Regulations makes provision for providers of FNNE, which has the meaning given to it in section 80(1)(a) of the 2021 Act, allowing them to meet the requirements of on-going assessment by adopting the assessment arrangements published by the Welsh Ministers under Regulation 9. However, FNNE providers do not have to adopt the curriculum or assessment arrangements made by Welsh Minister, in such circumstances the providers of FNNE must ensure that there is an adopted Curriculum which meets the Curriculum requirements.
- 4.15 To ensure that all learners in receipt of FNNE are being supported to make progress along their adopted curriculum, where a provider chooses not to adopt the Welsh Ministers' assessment arrangements, they must make, implement, review and revise their own assessment arrangements. To ensure the assessment arrangements support progress and inform teaching and learning, these must be made at the same time as curriculum design.

### **Implementation of Assessment Arrangements**

- 4.16 Regulation 4 of the 2022 Regulations makes provision for the implementation of the assessment arrangements made under Regulation 3. It places a duty on the "relevant person" as defined by the 2021 Act to implement the assessment arrangements. This places joint responsibility on the head teacher and governing body of a maintained school or maintained nursery school to implement assessment arrangements.
- 4.17 For other settings, those responsible for making the assessment arrangements are also responsible for their implementation.

### **Review and Revision of on-going assessment arrangements**

- 4.18 In line with duties placed on schools and settings in respect of ensuring an adopted curriculum is kept under review and revised to ensure it continues to meet the Curriculum requirements, Regulation 5 of the 2022 Regulations places duties on schools and settings to review and revise assessment arrangements to ensure they remain relevant to the adopted Curriculum. This provision intends to ensure assessment arrangements align with the curriculum and continue to support learner progression. In a maintained school or maintained nursery school these duties are jointly owned by the head teacher and the governing body.

### **Arrangements for Assessing On Entry**

- 4.19 In order to plan and to appropriately support a child or learner to make progress within a curriculum it is essential to have an understanding of where they currently are in their learning. To support this and ensure that this understanding is in place from the very beginning of a learner's journey within a school or setting, regulation 6 of the 2022 Regulations requires that the person set out in the section (head teacher, provider, teacher in charge,

management committee, local authority) make and implement assessment arrangements which help build a picture of the learner's abilities and aptitudes in respect of the school's or setting's curriculum. It is intended that these assessments are the first step towards developing an understanding of a learner, their strengths, areas of improvement, and where more focus or support is needed, and that this information is then used to plan next steps and to tailor teaching and learning to enable progress.

4.20 To ensure schools have the flexibility to align their on-entry assessment arrangements with their curriculum, it will be for schools and settings to determine the detail of these on-entry assessment arrangements. The 2022 Regulations require that these assessments must be suitable for learners or children of differing ages, abilities and aptitudes and must cover the numeracy and literacy skills, and the physical, social and emotional development of children and learners.

4.21 In recognising that children and learners enter into schools and settings at different points across the 3-16 continuum, whether that be entering nursery provision, maintained or FNNE, starting in a school or setting at compulsory school age, or entering a school or setting at the beginning or part way through an academic year, and to ensure that the information gained from these assessments are used to support learner progress, the regulation requires on-entry assessments to be undertaken within 6 weeks of a child or learner beginning in a school or setting, with the exception of Year 6 learners transitioning to Year 7. For this group of learners, information to support their progress along the continuum of learning should be transferred as part of Transition arrangements put in place between primary and secondary schools.

#### **Implementation of the arrangements for assessing on-entry**

4.22 Regulation 7 of the 2022 Regulations places a duty on the "relevant person" to implement the on-entry assessment arrangements.

#### **Review and Revision of the arrangements for assessing on-entry**

4.23 Regulation 8 of the 2022 Regulations requires that the arrangements put in place for assessing learners on-entry are kept under review, and revised if necessary by the "relevant person". This is to ensure that the on-entry assessment arrangements allow practitioners to develop an understanding of the learner in respect of the adopted curriculum and to ensure that they remain fit for purpose.

#### **Welsh Ministers' duty to publish assessment arrangements**

4.24 CfW applies to all learners aged 3 to 16 in maintained or funded non-maintained nursery provision. Under section 13 of the 2021 Act, Welsh Ministers must publish a suitable curriculum providing for FNNE. These duties were placed on Welsh Ministers in recognition that FNNE providers may face difficulty in finding capacity to design their own curriculum. In further recognition of these capacity concerns and acknowledging that it would not be reasonable to ask FNNE settings to make assessment arrangements for a Curriculum they have not designed, regulation 9 of the

2022 Regulations requires Welsh Ministers to make assessment arrangements for the Curriculum they publish under section 13 of the 2021 Act.

- 4.25 The Regulation also requires the Welsh Ministers to keep the assessment arrangements under review and revise them if they no longer meet the assessment requirements or if it is appropriate to do so.
- 4.26 Regulation 9 requires that the assessment arrangements for the published curriculum are made no later than 1st September 2023. It is intended that draft assessment arrangements, developed through co-construction, will be available from September 2021 to allow providers of FNN education to meet their duties in respect of assessment arrangements. These assessment arrangements will not be finalised until September 2022, to allow for a period of consultation and trialling.
- 4.27 The requirements placed on Welsh Ministers' to make, review and revise assessment arrangements also extend to the on-entry assessment arrangements for a child first entering into a setting. The purpose and intended effect of assessing a learner on-entry are outlined in paragraphs 4.12-4.14 above.

## **5 Consultation**

- 5.1 The legislative proposals were developed co-constructively with members of the Assessment Advisory Group (AAG), an expert group with representatives from primary, secondary and special schools, academics and representatives from the middle tier including Regional Consortia and Partnerships and Estyn. The co-construction of the policy allowed us to draw on the knowledge and expertise of the group to consider and reflect on the operational effect and associated implications of the policy proposals.
- 5.2 AAG have been a key component in the development of assessment policy within Curriculum for Wales, co-constructing the Supporting Learner Progression Guidance, as well as the more detailed policy for the 2022 Regulations.
- 5.3 An 8 week formal consultation ran from 6 September to 31 October 2021 on the proposals for assessment arrangements within CfW. The consultation was promoted to a wide audience of key stakeholders including schools, settings, local authorities, regional consortia, the Children's Commissioner for Wales, children's groups, Estyn, teacher unions and wider stakeholders.
- 5.4 The engagement strategy to support the consultation included work with Wavehill to deliver specific focus groups. The overall objective of the focus groups was to collect a range of additional information to support our understanding of the views of certain groups towards the proposals. This included more detailed questions on proposals in the consultation document, as well as specific questions relating to individual stakeholder

groups outlined in requirements. The focus groups canvassed views from children and young people, parents and carers, senior leaders, governors and representatives from EOTAS settings including PRUs.

- 5.5 78 responses were received. A number of these responses were detailed submissions. The consultation document and summary of the responses are available online at: [Assessment arrangements: subordinate legislation resultant of the Curriculum and Assessment \(Wales\) Act 2021.](#)
- 5.6 The key points raised mostly related to wider feedback, which extended beyond the content of the 2022 Regulations. However, feedback received helped revise the drafting of the 2022 Regulations, for example to address some of the concerns raised around the potential summative nature of on-entry assessment, as understood by the consultation proposals. To ensure greater clarity that the focus of the assessments is at a school/setting curriculum level, and is a range of assessments using different techniques, we have adapted the language to “Arrangements for Assessing On-Entry” and have provided greater clarity of the focus of these assessments in the Assessment Guidance.
- 5.7 Wider feedback, which extended beyond the content of the 2022 Regulations, was captured and is already informing policy, programme and guidance development. A summary of key themes raised are below:
- Identification of a need for additional supporting material and best practice exemplification of the practical implementation of assessment arrangements;
  - Queries around how parity in progression will be delivered nationally with locally designed curriculum and assessment arrangements;
  - Call for greater support to understand what progress will look like under CfW with the removal of Foundation Phase and Key Stage levels descriptors,
  - Need for high quality professional learning to support practitioners and leaders to be able to make, implement and review fit-for-purpose assessment arrangements;
  - Recognition that there would need to be a significant time commitment needed to deliver the broader proposals which would have a corresponding financial impact to release practitioners from teaching;
  - A need for confidence in the system that trialling and amending approaches to curriculum and assessment arrangements will be supported;
  - A call for greater understanding of the role of Estyn and how evaluation and improvement arrangements will operate when assessment no longer generates data to report.
- 5.7 As set out by the Minister for Education and Welsh Language in his oral statement on 6 July 2021, work on the areas covered by wider feedback is already in train for September 2021 onwards. For example, feedback which highlighted learning progression and assessment as key areas for support, is informing the development of the all-Wales progression project, the

priorities of the National Network for curriculum implementation from September, and further updates to guidance at the end of 2021.

## Part 2 – Regulatory Impact Assessment (RIA)

### 6. RIA Overview

- 6.1 The assessment arrangements form an integral part of the Curriculum for Wales Framework which, alongside other duties and requirements placed on schools and settings under the 2021 Act, give clarity and national expectations on how a curriculum must/can be developed.
- 6.2 As recognised in the [Designing your Curriculum](#) section of the Curriculum for Wales guidance, curriculum and assessment development is a necessarily holistic process. It needs to reflect a range of considerations, which includes the assessment arrangements provided for under the 2022 Regulations, as well as other duties and mandatory requirements under the 2021 Act, wider curriculum guidance, as well as local circumstances. Consequently, separate and distinct analysis and costings relating to apportioned impacts of specific elements of the Framework is not considered feasible; or if attempted, would result in questionable results given the wide range of variables and caveats that would be involved. In short, it would be unrealistic to attempt to unpack, assess and report on the impacts of the specific requirements set out in the wider process of Curriculum for Wales' implementation in schools and settings.
- 6.3 Detailed information on the costs, benefits and risks associated with the process of curriculum assessment for schools and settings has been undertaken. This is set out in the [Explanatory Memorandum \(EM\) and Regulatory Impact Assessment \(RIA\)](#) for 2021 Act passed in the Senedd on 9 March 2021 and received Royal Assent on 29 April 2021 and published in April 2021. During the passage of the 2021 Act the Welsh Government committed to updating the Senedd on the costs relating to implementation of the 2021 Act and curriculum reform. This update is being provided in January 2022 as part of budget scrutiny.

### Impact Assessments

- 6.4 The process of impact assessment in respect of Curriculum for Wales 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. These include:
- The Explanatory memorandum and Regulatory Impact Assessment for the [Statements of What Matters and Progression Code](#) published in September 2021.
  - 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 2021 Act. As noted at paragraph 6.3, the Welsh Government has also committed to further update this RIA by the end of 2021.

- 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.
- An [integrated impact assessment on proposals for Religion, Values and Ethics](#) published in April 2020.
- The [justice system impact identification](#) form published in April 2018.

## 7. Options

- 7.1 Options regarding the approach to assessment arrangements within CfW were considered (and debated by Members in the Senedd) as part of the passage of the 2021 Act in 2020 through to 2021. Consequently this is covered by the EM and RIA for the 2021 Act.
- 7.2 In summary, it was considered that assessment arrangements must be made to support learner progression within Curriculum for Wales and that the detailed requirements for these should be set out in the 2022 Regulations.
- 7.3 Options were considered around whether the detail of these should be outlined in guidance, placed on the face of the 2021 Act or detailed in 2022 Regulations. It was concluded that guidance was better suited to details of the principles and approach to assessment within CfW, but because of the integral nature of assessment within CfW, the detailed requirements for assessment arrangements should be of statutory status. Given the detailed nature of the requirements and the new approach to assessment, it was considered that placing the detail on the face of the 2021 Act would not provide the flexibility needed to take on and respond to potential changes in requirements on implementation. It was therefore concluded that requirements should be laid out in 2022 Regulations.
- 7.4 Regulations provide schools and settings with the necessary assurance regarding assessment arrangements providing a degree of consistency in approach to understanding and supporting learner progression within CfW.

- 7.5 During the scrutiny of the 2021 Act when it was a Bill, debate on the Regulations for assessment arrangements resulted in an amendment being passed, changing the requirement to allow Regulations on assessment arrangements to be made, to placing a duty on Welsh Ministers requiring Regulations about assessment arrangements to be made.
- 7.6 Consequently section 56 of the 2021 Act requires Welsh Ministers to make the 2022 Regulations.
- 7.7 The principles and intended approach, along with the legislative proposals to assessment within CfW was consulted on in April 2019. This resulted in substantive revisions to the Supporting Learner Progression – Assessment Guidance which was published in draft in January 2020.
- 7.8 The Minister has consulted on the proposals for assessment arrangements specified in the 2022 Regulations and a summary of the feedback to the consultation is outlined in the EM above.

## **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 2022 Regulations on the grounds that such analysis is considered unrealistic. However, we do not envisage any additional costs to the education system will arise from these Regulations over and above that set out in the RIA referenced at paragraph 6.3.
- 8.2 Without the 2022 Regulations schools and settings would not have any statutory obligation to make or implement assessment arrangements to support their Curriculum. Without statutory duties, schools and settings could choose not to make or implement assessment arrangements resulting in a lack of support and understanding of learner progression within a curriculum and a corresponding gap in essential information needed to inform self-evaluation and improvement and raise learner attainment.

## 9. Competition Assessment

### 9.1 The competition filter test:

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

9.1 The provisions within the 2022 Regulations 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.

9.2 The provisions in the 2022 Regulations are 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.

9.3 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 Regulations in schools and settings will take place from September 2022 through to 2026/27 academic year as the Curriculum for Wales is rolled out across schools and settings. Review of their implementation will form 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. A formative evaluation will be conducted in the early years of implementation to understand early successes and challenges, and whether the curriculum reforms are having the intended consequences. This will enable any necessary changes to be made to policies to increase their effectiveness. 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. As part of this process work will be prioritised through the National Network for curriculum and assessment implementation to both support schools and settings work on learning progression and to develop system-wide understanding and review of the associated principles over time.