

Explanatory Memorandum to the following Regulations:

- Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Primary Legislation) Regulations 2022
- The Transition from Primary to Secondary School (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Department for Education, Social Justice & Welsh Language 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:

- Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Primary Legislation) Regulations 2022
- The Transition from Primary to Secondary School (Wales) Regulations 2022

I am satisfied the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
26 May 2022

PART 1

1. Description

The Consequential Amendments Regulations:

- 1.1. Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Primary Legislation) Regulations 2022 (“the 2022 Consequential Regulations”) make amendments to primary legislation required to give full effect to provisions under the Curriculum and Assessment (Wales) Act 2021 (“the 2021 Act”) and the implementation of the new Curriculum for Wales (“CfW”) from September 2022.

Transition Regulations:

- 1.2. The Transition from Primary to Secondary School (Wales) Regulations 2022 (“the 2022 Transition Regulations”) make provision in respect of transition plans. That provision includes the content to be covered, the timing for drawing up plans, to whom transition plans apply, and details the review and publication requirements of a transition plan.
- 1.3. The Regulations revoke and replace the Transition from Primary to Secondary School (Wales) Regulations 2006 (“the 2006 Transition Regulations”).

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

- 2.1 The Regulations listed in the explanatory memorandum have been laid as a single package to support the implementation of the Curriculum for Wales from September 2022.
- 2.2 Where appropriate, the amendments made by the 2022 Consequential Regulations will be implemented on a phased basis according to the timetable below:

| <i>Phased in from:</i> | <i>School year/learners subject to the CfW</i> | <i>School year/learners subject to the National (and Local) Curriculum</i> |
|-------------------------------|---|--|
| September 2022 | Nursery years, reception, year 1 up to year 6 and year 7 for schools/settings which have chosen to implement the new CfW from 2022. | Year 7 of schools/setting which have chosen not to implement the new CfW from 2022; and years 8 to 11. |
| September 2023 | All years up to and including 8 | Years 9 to 11 |
| September 2024 | All years up to and including 9 | Years 10 to 11 |
| September 2025 | All years up to and including 10 | Year 11 |

| | | |
|----------------|--|--|
| September 2026 | Nursery years, reception, and compulsory age learners (years 1 to 11). In relation to Part 5 of the 2021 Act - those learners in maintained schools in post-16 education (years 12 and 13). | None – the National Curriculum will no longer apply. |
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3. Legislative background

- 3.1 The 2021 Act, which received Royal Assent on 29 April 2021, sets out the legislative framework for a new purpose led curriculum and assessment framework for children and young people from 3 to 16 years old receiving education at:
- maintained schools
 - settings providing Funded Non-maintained Nursery Education (FNNE)
 - pupil referral units (PRUs); and
 - settings providing non-PRU EOTAS arranged by local authorities.
- 3.2 It also makes limited provision for post compulsory education at maintained schools (Part 5 of the 2021 Act).

The 2022 Consequential Regulations

- 3.3 Section 74 of the 2021 Act enables the Welsh Ministers to make provision in regulations that they consider is necessary or appropriate to give full effect to any provision in the 2021 Act, or in consequence of any provision in the 2021 Act. This may be supplementary, incidental or consequential provision, or transitional, transitory or saving provision.
- 3.4 The regulations made under section 74 of the 2021 Act may amend primary or secondary legislation (including the Act itself). The 2022 Consequential Regulations are made under that power.

The 2022 Transition Regulations

- 3.5 Section 198 of the Education Act 2002 (“the 2002 Act”) provides a power for the Welsh Ministers to require governing bodies of maintained secondary schools in Wales to have a transition plan with feeder primary schools (section 198(1)). It also provides a power for the Welsh Ministers to make regulations in relation to those transition plans (section 198(5)). The purpose of the transition plans is to facilitate the transition of pupils from the primary schools to the secondary school.
- 3.6 Therefore, the requirement for governing bodies of maintained secondary schools and their feeder primary schools to have a transition plan is set out in the Requirement for the Production of Transition Plans and Guidance 2022 (“the 2022 Requirement and Guidance for Transition”). It also contains guidance on how schools can comply with the requirement. The transition plan

must be made in accordance with, under the 2022 Transition Regulations. The 2022 Requirement and Guidance for Transition is made under section 198(2) of the Education Act 2002.

- 3.7 The 2022 Requirement and Guidance for Transition is subordinate legislation which is not a statutory instrument. The current requirement to have transition plans is contained in the Requirement for the Production of Transition Plans and Guidance 2006. That will be revoked and replaced by the 2022 Requirement and Guidance for Transition. That subordinate legislation also contains guidance for the purpose of determining whether a particular school is to be regarded as a feeder primary school in relation to a particular secondary school.
- 3.8 The current regulations are the Transition from Primary to Secondary school (Wales) Regulations 2006 (“the 2006 Transition Regulations”). The 2006 Transition Regulations are revoked by the 2022 Transition Regulations.

4. Purpose and intended effect of the legislation

- 4.1 The 2021 Act established a new and reformed legislative framework to support the implementation of the new curriculum and assessment arrangements as part of a wider programme of education reform in Wales. The purpose of the Regulations set out in this explanatory memorandum is to make detailed provision for:
- the transition of pupils from year 6 to year 7,
 - make consequential amendments to primary legislation necessary to implement the new CfW.

The 2022 Consequential Regulations

- 4.2 The amendments contained in these regulations are necessary in consequence of, and for giving full effect to, the 2021 Act.
- 4.3 Regulation 1 of the 2022 Consequential Regulations provides for the commencement of these Regulations by year group. This will mirror the planned roll out of the CfW which will also be phased in over a period of time by year group from September 2022.
- 4.4 Regulation 3 provides for Schedule 1, which contains minor corrections to sections 13 to 16 of the 2021 Act.
- 4.5 Regulation 4 provides for Schedule 2, which contains consequential amendments to other primary legislation. For example, amendments within Schedule 2 of the 2022 Consequential Regulations amend terminology in enactments so that their provisions align with the 2021 Act, including removing references to “National Curriculum” and the “key stages” and (separately) inserting references to “Religion, Values and Ethics” and “the four purposes of a curriculum”.

The 2022 Transition Regulations

- 4.6 With the introduction of CfW from September 2022, the 2006 Transition Regulations required review and revision to ensure they aligned with the ethos of the CfW.
- 4.7 All schools have transition plans in place but the focus of these are on the transition and continuity of curriculum planning, teaching and learning based on the existing curriculum. The current legislation also includes language which no longer fits within CfW and that must be moved away from, to demonstrate the significant change in approach that a purpose led CfW curriculum requires.
- 4.8 Provision for effective transition remains important under CfW to ensure continuity of learning and continued, appropriate and supported progression for learners between primary and secondary school.
- 4.9 The 2022 Transition Regulations (regulations 2 and 4) place duties on the governing bodies of maintained schools to draw up new transition plans between secondary schools and their feeder primary schools which supports and ensures transition of learners from year 6 to year 7 is based on schools' new curriculum, to be implemented from September 2022.
- 4.10 To ensure continuity of learning is taken account of during curriculum design and that teaching and learning is appropriately designed and delivered to support progression, implementation of transition plans must happen from the very beginning of the academic year. With this in mind, and in consideration of the work needed between schools to draw up transition plans, the Regulations will come into force on the 1 July 2022.
- 4.11 As the transition of current year 6 learners (academic year 2021/22) will not happen until September 2022, and as these learners will be transitioning under the existing curriculum, the 2006 Transition Regulations will be revoked on the 1 September 2022.
- 4.12 This will be the last cohort of learners transitioning from year 6 to year 7 under the existing curriculum and under the existing arrangements.
- 4.13 The 2022 Transition Regulations mirror the requirements of the 2006 Transition Regulations in respect of to whom requirements apply; to maintained secondary schools and their maintained feeder primary schools. The definition of a feeder primary school is retained, as so defined in the 2022 Requirement and Guidance for Transition (due to be published on 1 July).
- 4.14 Whilst the 2022 Requirement and Guidance for Transition provides further clarity on who is required to produce transition plans, it is recognised that disputes may still arise as to whether a primary school is deemed to be a feeder primary school to a secondary school. Regulation 5 of the 2022 Transition Regulations therefore makes provision for Welsh Ministers to determine any such disputes.

- 4.15 Regulation 6 of the 2022 Regulations provides for the form and content of Transition Plans. This regulation is similar to equivalent provision in the 2006 Transition Regulations however the matters to be dealt with, as specified in the Schedule are amended to take account of the ethos of CfW.
- 4.16 The matters to be dealt with in the transition plan, as detailed in the Schedule to the 2022 Transition Regulations, include proposals generally for managing and co-ordinating the transition of pupils; proposals generally for how continuity of learning will be achieved through curriculum design and planning for teaching and learning for pupils in year 6 moving to year 7, proposals for how each individual pupil's progression will be supported as they transition from primary school to secondary school.
- 4.17 CfW recognises the importance of the well-being of the learner to enabling successful learning. To ensure that the well-being of learners and their individual needs are an integral part of the transition process in the future; the schedule also requires that proposals for how the learning needs and the well-being of each individual pupil will be supported as they transition from primary school to secondary school is a matter to be dealt with in the schedule.
- 4.18 It is important that once plans are agreed and are being implemented, that they are kept under review. Review will not only ensure that the plans only exist between those parties it is required to, i.e., that plans only include current schools within the feeder primary school's definition, but will also ensure they deliver the intended outcomes of supporting learner progression and maintaining continuity of learning. Regulation 8 and 9 make provision for the review and purpose of review of transition plans and paragraph 5 of the Schedule makes provision for the review and monitoring of the impact of the Transition plan.
- 4.19 Provision in respect of publication of transition plans (regulation 7) or of a statement following a review (regulation 10) as well as provision in respect of publication and provision of copies of Transition Plans (regulations 11) in the 2022 Transition Regulations have remained the same as those in the 2006 Transition Regulations

5. Consultation

The 2022 Consequential Regulations

- 5.1. No formal consultation has taken place in relation to the 2022 Consequential Regulations as they make only technical and consequential amendments required to give full effect to the Act. However, officials held discussion with key partners to set out policy intentions relating to consequential amendments on Religion, Values and Ethics.

The 2022 Transition Regulations

- 5.2. 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.

- 5.3. 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 Transition Regulations.
- 5.4. 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.
- 5.5. 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.
- 5.6. 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.](#)
- 5.7. The key points raised mostly related to wider feedback, which extended beyond the content of the 2022 Transition Regulations. However, feedback received helped revise the drafting of the 2022 Transition Regulations, for example feedback raising concerns around sharing information on "the mental health" of a learner at transition or when providing information to parents and carers has led to references to mental health being removed with a focus only on the wellbeing of the learner.
- 5.8. Feedback indicated a desire for exemplification and supporting materials across both legislative areas and work is underway to produce additional supporting materials which will be published in later in the 2022 summer term.

PART 2 – REGULATORY IMPACT ASSESSMENT

A regulatory impact assessment has not been prepared in respect of the Consequential Amendments Regulations as they simply make amendments to statute and do not impose or reduce costs for business, charities or voluntary bodies or the public sector.

6. RIA overview

- 6.1 The requirement for transition plans between secondary schools and their feeder primary schools to support transition of learners from year 6 to year 7 is a key processes that already exist within the school system and sits alongside other duties and requirements placed on schools. It continues to remain an important process under the CfW framework.
- 6.2 As recognised in the [Designing your Curriculum](#) section of the CfW guidance, curriculum and assessment development is a necessarily holistic process. It needs to reflect a range of considerations, as well as other duties and mandatory requirements under the 2021 Act, wider curriculum guidance, as well as local circumstances. The 2022 Transition Regulations take account of the level of subsidiarity provided to schools through the CfW framework and provide flexibility to governing bodies and head teachers in how provisions should be implemented, to mirror and support that subsidiarity. Consequently, separate and distinct analysis and costings relating to apportioned impacts of specific elements of the CfW legislative Framework (of which these regulations are part of) 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 CfW 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 was provided to the CYPE committee in January 2022 as part of budget scrutiny.

Impact Assessments

- 6.4 The process of impact assessment in respect of CfW 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 [Education \(Arrangements for assessing in the Curriculum for Wales\) Regulations 2022](#).
 - 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

Requirements to make Transition Plans to support Transition from Primary to Secondary school

7.1 Two options have been considered in this assessment.

Option 1 – Do Nothing – Keep the existing legislation

7.2 Consideration was given to whether the current legislation (the 2006 Transition Regulations) could be kept to continue to govern the important process of developing transition plans to support transition of learners from primary to secondary school, under CfW. The 2006 legislation embodies the existing curriculum, with a focus on monitoring and tracking of learners against levels and key stages. This does not align with CfW and this option was therefore not viable.

7.3 CfW is a purpose led curriculum across a 3-16 continuum where the individual learner and their individual progress sits at the heart of development and delivery. Subsidiarity is one of the fundamental principles of CfW and under the 2021 Act, with schools designing their own Curriculum and Assessment arrangements within the nationally prescribed legislative framework.

7.4 With the implementation of CfW from September 2022, transition of learners from year 6 to year 7, and the plans that are in place that underpin the process for transition need to align with teaching and learning within the new Curriculum. Secondary schools and their feeder primary schools will need to consider transition arrangements within this new environment, taking account of the individual curriculum being implemented within the schools.

- 7.5 This requires that new transition plans are drawn up, with a focus on CfW.
- 7.6 The 2006 Transition Regulations do not align with CfW. Review and implementation of new plans under the existing legislation would not support transition in CfW.

Option 2 – Revoke and Replace the 2006 Transition Regulations

- 7.7 The 2022 Transition Regulations revoke and replace the 2006 Transition Regulations.
- 7.8 The 2022 Transition Regulations largely replicate the requirements laid out in the 2006 Transition Regulations, however when considering the options as to the matters that should be dealt with in transition plans, it was recognised that greater focus was needed on the individual learner and progression, in line with CfW.
- 7.9 In order that transition arrangements support all learners to progress, providing continuity of learning at this critical point in the continuum of learning, matters which must be dealt with in transition plans now focus on individual pupil progression and how that is to be supported during transition; how continuity of learning will be achieved through curriculum design, and planning and teaching for learning for year 6 pupils, and how individual learner needs and well-being will be supported during transition.

Costs and Benefits

- 7.10 There are no additional substantial costs associated with the introduction of the Transition from Primary to Secondary school regulations 2022. Relevant schools are already required to put in place transition plans and to regularly review and update these. Review is currently on a three yearly cycle or can be triggered by a primary school becoming a new feeder primary school to a secondary school, or where the governing bodies of schools concerned consider it might be necessary to undertake a review.
- 7.11 The 2022 Transition Regulations and the 2022 Requirement and Guidance for Transition will require that all secondary schools and their feeder primary schools put in place new transition plans for transition of year 6 pupils to year 7 under CfW. Whilst this requirement, for some schools, may be outside of the three-year maximum review cycle and may bring the timing of a review forward, these costs of transition planning are an existing cost within the school system.
- 7.12 Without the 2022 Transition Regulations revoking and replacing the 2006 Transition Regulations, planning for and supporting the transition of learners from primary to secondary school would not focus on continuity of learning within CfW, would not take account of the individual learner needs and how they should be supported and could fail to adequately support learners to progress.