

Explanatory Memorandum to the following Regulations:

- The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022
- The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022
- The Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022
- The Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022
- The Education in Multiple Settings (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:

- The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022
- The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022
- The Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022
- The Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022
- The Education in Multiple Settings (Wales) Regulations 2022

I am satisfied the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
17 June 2022

PART 1

1. Description

The Consequential Regulations:

- 1.1. The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022 and The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022 (“the Consequential Regulations”) make amendments to secondary legislation required to give full effect to provisions under the 2021 Act and the implementation of the new Curriculum for Wales (“CfW”) from September 2022.

The Exceptions Regulations:

- 1.2. The Education (Temporary Exceptions) (Wales) Regulations 2022 (“The Exceptions Regulations”) will enable head teachers of maintained schools and maintained nursery schools and providers of funded non-maintained nursery education to determine that the provisions of the CfW should not apply to a child or pupil, or should apply with modifications.

The Multiple Settings Regulations:

- 1.3. Many children and pupils are registered in more than one setting. The Education in Multiple Settings (Wales) Regulations 2022 (“the Multiple Settings Regulations”) make provision for the persons set out in these Regulations to prepare and review a plan as to the teaching and learning to be provided for the child or pupil in the CfW and to set out what assessment arrangements will apply to the child or pupil.
- 1.4. Provisions under paragraphs 1.1 to 1.3 above are to be commenced on 1 September 2022, through the Curriculum and Assessment (Wales) Act 2021 (Commencement No. 3 and Transitional and Saving Provisions) Order 2022.

The Provision of Information Regulations:

- 1.5. The Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022 are made under sections 408 and 569 of the Education Act 1996 and place duties on head teachers of all maintained schools, including Pupil Referral Units (PRU) to make arrangements for the provision of information to parents and adult pupils in respect of the progress of a learner against the relevant curriculum across the academic year.

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 The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022 make amendments to secondary legislation made under various enactments.
- 2.3 The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022 make amendments to secondary legislation made under the Education Act 2002.
- 2.4 The Curriculum and Assessment (Wales) Act 2021 (Commencement No. 3 and Transitional and Saving Provision) Order 2022 commences provisions under the 2021 Act 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.

- 2.5 Where appropriate the amendments made under the Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022 and the Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022 will also be phased in in-line with the timetable above.
- 2.6 The commencement of the provisions within the Provision of Information Regulations and the disapplication and revocation of the 2011 Regulations will be phased in-line with the above timetable.
- 2.7 The Multiple Settings and Exceptions Regulations will also be phased in in accordance with this timetable.

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 including maintained nursery schools;
 - settings providing Funded Non-maintained Nursery Education (FNNE)
 - PRUs; and
 - settings providing non-PRU education other than at school (“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 Consequential Regulations

- 3.3 Section 74(1) of the 2021 Act enables the Welsh Ministers to make provision in Regulations that they consider 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.

The regulations made under section 74(1) of the 2021 Act may amend primary or secondary legislation (including the Act itself). Section 75(1)(b) of the 2021 Act further provides that the Welsh Ministers may make different provision for different purposes. The Consequential Regulations are made under those powers.

The Exceptions Regulations

- 3.4 Part 2 of the 2021 Act makes provision setting out the requirements relating to curriculum adoption and implementation. Chapter 4 establishes the powers and circumstances under which a child or young person can be excepted from some or all of these requirements.
- 3.5 Section 42 enables the Welsh Ministers to make Regulations allowing a head teacher or provider of funded non-maintained nursery education (FNNE) to make a determination to disapply or modify the implementation of the curriculum for a pupil or child.
- 3.6 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.
- 3.7 [Subsection \(4\)](#) enables the Welsh Ministers to specify, by Regulations, further conditions that must be met before a determination may be made.
- 3.8 Sections 42 to 43 of the 2021 Act largely replicate existing provision in section 114 of the Education Act 1996.

- 3.9 Section 112 of the Education Act 2002 provides an equivalent power. The current regulations are the [Education \(National Curriculum\) \(Temporary Exceptions for Individual Pupils\) \(Wales\) Regulations 1999](#) (“the 1999 Regulations”). Those 1999 Regulations were originally made under the Education Act 1996 but following the repeal of the 1996 Act provisions the 1999 Regulations are deemed to take effect as if made under the 2002 Act by virtue of the Interpretation Act 1978.

The Multiple Settings Regulations

- 3.10 Section 69 of the 2021 Act enables the Welsh Ministers to make Regulations about teaching and learning for learners of compulsory schools age who receive education in more than one educational setting, including children and young people registered at:
- More than one maintained school
 - A maintained school and a pupil referral unit
 - A maintained school and with a provider of education other than at school
 - A pupil referral unit and with a provider of education other than at school.
- 3.11 The Regulations may apply provisions of the Act in relation to those children, with or without modifications.

Provision of Information Regulations

- 3.12 Section 408 and 569 of the Education Act 1996 provides powers to Welsh Ministers to make Regulations in respect of the provision of information for maintained schools and maintained nursery schools. Using these powers the Welsh Ministers made the Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011 (“the 2011 Regulations”) which provide the current legislative basis for provision of information to parents on a pupil’s progress in school and attainment of qualifications.
- 3.13 The Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022 disapplies and then revokes the 2011 Regulations and using powers under section 408 of the Education Act 1996, places new duties on Head Teachers in respect of provision of information to parents on a pupil’s progress in school and attainment of qualifications.

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:
- making consequential amendments necessary to implement the new CfW
 - for exceptions or modifications to be made for pupils in the new curriculum
 - plans to be made for children and pupils educated at more than one setting.

- Sharing of information with parents, carers and pupils.

The 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 The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 1) Regulations 2022 make amendments to subordinate legislation made under various enactments:
- The Children Act 1989
 - The Education Act 1996
 - The School Standards and Framework Act 1998
 - The Education Act 2005
 - The Learning and Skills (Wales) Measure 2009
 - The Education (Wales) Act 2014
 - The Social Services and Well-being (Wales) Act 2014.
- 4.4 Regulations 1 and 2 come into force on 1 September 2022, and the remaining provisions come into force as set out in the individual regulations 3 to 13, which make consequential amendments to subordinate legislation.
- 4.5 The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 2) Regulations 2022 make amendments to subordinate legislation made under the Education Act 2002 (“the 2002 Act”).
- 4.6 Part 1 of these Regulations provides for the commencement of the amendments on 1 September 2022 except as set out in the individual regulations listed in Part 2 and the definition of terminology included in the provisions.
- 4.7 Part 2 makes consequential amendments to other subordinate legislation. For example, amendments within Part 2 amend terminology in regulations so that their provisions align with the 2021 Act, including removing references to “National Curriculum” and the “key stages” and inserting references to “curriculum adopted under the 2021 Act”. It also revokes subordinate legislation not required for the implementation of the CfW, including the Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008.

The Exceptions Regulations

- 4.8 As the existing 1999 Regulations only apply to the National Curriculum they will not work with the new curriculum, therefore, we are revoking those Regulations and make new provision under the 2021 Act for children and pupils in the new curriculum. The new provision will be very broadly similar to that made in the 1999 Regulations.

- 4.9 The Exceptions Regulations made under section 42 will enable head teachers and FNNE providers to disapply, or apply with or modifications, all or some of the 2021 Act curriculum requirements. However, they will need to be satisfied that the curriculum that will be implemented for the individual or child as a result of the determination will —
- enable the pupil or child to develop in the ways described in the four purposes;
 - secure teaching and learning that offers appropriate progression for each pupil or child;
 - be suitable for the pupil or child's age, ability and aptitude;
 - take account of the pupil's or child's additional learning needs (if any); and
 - secure broad and balanced teaching and learning for the pupil or child.
- 4.10 The Exception Regulations provide for:
- operative period of 6 months
 - 1 month lead in period
 - the operative period may be cut short if it the exemption is no longer required
 - there may be further determinations providing for a further temporary exceptions.
- 4.11 The 1999 Regulations make requirements in relation to the provision of information about temporary exceptions. However, this detail is set out in section 44 of the 2021 Act so there is no need to make provision in the new Regulations.
- 4.12 The information should be provided to the pupil and the pupil's parent/carer. In the case of children in funded nursery education it must be provided to the parent/carer.
- 4.13 The Exception Regulations enable a determination to be varied or revoked where the head teacher or FNNE provider is satisfied that any provision contained in it is no longer appropriate for that pupil or child. However, as with the 1999 Regulations, the new Exceptions Regulations will not allow changes to the operative period.
- 4.14 Similar to the 1999 Regulations, the Exception Regulations will enable parents/carers and pupils to request the head teacher make, vary or revoke a determination. In the case of FNNE providers, the parents/carers (not the child) will be able to make a request.
- 4.15 Sections 45 and 46 of the 2021 Act make provision in relation to appeals about temporary exceptions for individual pupils and children respectively.

The Multiple Settings Regulations

- 4.16 There are a number of reasons why children and young people are registered at more than one setting. For example, children dividing their time between separated parents with joint custody; children from Traveller communities; and

children who receive EOTAS for a portion of the week because they are unable, for whatever reason, to attend full-time education in a maintained school.

- 4.17 Making provision for planning and co-ordination of the curricula delivered for these learners is important to ensure that they benefit from the full curriculum as appropriate for them; and that assessment arrangements contribute appropriately to their progression throughout their education.
- 4.18 EOTAS, including education at PRUs,¹ can play a crucial role in educating learners for whom mainstream education is not suitable, including some vulnerable learners. It can be provided in a number of ways including, but not limited to, further education institutions, local authority provided home tuition (which is different to elective home education) or independent schools.
- 4.19 Under section 19A of the Education Act 1996² local authorities must make arrangements for the provision of suitable education at school, or otherwise than at school, for learners of compulsory school age who, for whatever reason, may not for any period receive suitable education unless such arrangements are made for them.
- 4.20 Learners receiving EOTAS may receive their education through a combination of provisions. This could include part-time EOTAS provision and part-time mainstream provision or full-time EOTAS made up of two or more types of provision. Regulation 9 of the Education (Pupil Registration) (Wales) Regulations 2010 makes provision for pupils who attend two registered settings, including independent schools, PRUs and mainstream schools, to be dual registered.
- 4.21 In 2020/21 there were 3,246 EOTAS pupils.³ Of these:
- 1,060 were sole registered EOTAS (full-time EOTAS provision)
 - 1,792 were dual-subsidary registered with their school (part-time EOTAS provision, spending the minority of their time at their school)
 - 394 were dual main registered with their school (part-time EOTAS provision, spending the majority of their time at their school).
- 4.22 There is currently disparity in the statutory curriculum requirements for learners in maintained schools and the statutory curriculum requirements for learners in PRUs and EOTAS. The 2021 Act facilitates a more inclusive framework for education by placing comparable curriculum and assessment requirements on providers across maintained schools, PRU and non-PRU EOTAS. This should aid children and young people transitioning from one type of setting to another, for example, from a PRU to a mainstream school.
- 4.23 The CfW requires providers to take account of what is appropriate for the learner and their development and it recognises that in some cases learners

¹ PRU are generally regarded as a form of EOTAS although a PRU is a school maintained by an LA.

² As inserted into the 1996 Act by the 2021 Act.

³ [Pupils educated other than at school: September 2020 to August 2021 | GOV.WALES](#)

might move from one setting to another or be registered in more than one school or setting.⁴

- 4.24 There were 474,724 pupils in local authority maintained schools in April 2021. Of these 1,866 pupils were registered at two maintained schools (nursery, primary, middle, secondary or special schools).⁵
- 4.25 Where a child or young person is registered in more than one school or setting the Multiple Setting Regulations place a requirement on the local authority where the learner is ordinarily resident to prepare a plan setting out how it will secure —
- the teaching and learning to be provided for the pupil at each school or setting
 - the assessment arrangements that will apply to the pupil at each school or setting, and
 - arrangements for reporting the pupil's progress to parents or carers.
- 4.26 The Multiple Setting Regulations do not prescribe the detail to be included in this plan. It will be for the local authority to work with the relevant persons responsible for the pupil's teaching and learning:
- Head teachers
 - Governing bodies
 - Teachers in charge
 - Management committees
 - Providers of EOTAS (arranged under section 19A of the Education Act 1996)
 - Local authorities (providing arrangements under section 19A of the 1996 Act or is responsible for a school at which the learner is registered).
- 4.27 A plan will commence on the day the learner is registered at more than one setting or as soon as possible after that; and the duration of the plan would be up to 12 months.
- 4.28 In addition, the local authority will be required to keep the plan under review and revise it if:
- the curricula provided to the learner in either setting is amended⁶
 - or
 - the authority considered it appropriate to do so at any time.
- 4.29 In order to promote transparency, the relevant persons will be required to provide a copy of the plan to the learner and their parent or carer. However, the requirement to provide a copy to the learners will not apply if, in consultation with the relevant persons (e.g. the head teacher or teacher in

⁴ For more information and guidance on the key features of PRU and non-PRU EOTAS provision under the Curriculum for Wales framework: [Education other than at school \(EOTAS\) - Hwb \(gov.wales\)](#).

⁵ School Census April 2021

⁶ In the case of a child provided with non-PRU EOTAS curriculum under section 53 of the 2021 Act the curriculum is bespoke to them rather than to the setting.

charge), the local authority decides the learner does not have the capacity to understand the information in the plan.

- 4.30 The benefits to this approach will be:
- securing a common approach nationally to dealing with learners registered in more than one setting. To ensure consistency and continuity for those registered in schools or settings in more than one authority;
 - making it easier for learners benefitting from PRUs or other EOTAS provision to transition back into mainstream education when they are able to do so; and
 - to reduce the likelihood that responsibility for learners will be lost between schools or settings, e.g. between EOTAS settings and schools (i.e. less ambiguity over who is responsible for the learner).
- 4.31 In the case of Looked after children, current legislation the local authority responsible for a looked after child must prepare a personal education plan (PEP) for that child.⁷
- 4.32 This is a record of the arrangements made to meet the child's needs in relation to education and training. However, the local authority looking after the child may not be the same as the local authority where they are ordinarily resident.
- 4.33 In order to ensure consistency the local authority looking after the child will be required to prepare the plan to co-ordinate curriculum provision across settings. This will ensure that the two plans accord and appropriate educational provision is made for that child.

The Provision of Information Regulations

- 4.34 The 2011 Regulations make provision for sharing information with parents and carers in respect of a learner's progress and attainment within the existing curriculum. The regulations make provision for reporting information in respect of attainment against the existing Curriculum, where learners' attainment is assessed through end of stage assessments, against key stages and level descriptors, where a judgement is made at a fixed point in time within a pupil's learning journey. Under the CfW there will not be key stages or level descriptors and pupils will be assessed along a continuum of learning, where progression steps and descriptions of learning should be used to help schools to plan appropriate progression.
- 4.35 With the passage of the 2021 Act and implementation of new curriculum arrangements from September 2022, provisions in respect of attainment against key stage assessments will become redundant. The 2011 Regulations therefore needed to be reviewed and revised to bring them in line with the ethos of CfW.

⁷ Section 83 of the Social Services and Well-being (Wales) Act 2014

Commencement and Revocation

- 4.36 CfW and the Provision of Information Regulations will be rolled out on a phased basis (as detailed in Section 2 above). Secondary schools will be subject to duties under both the 2011 Regulations and 2022 Provision of Information Regulations until such time as CfW is fully rolled out and the legislation is fully revoked. Regulation 1 and 3 of the Provision of Information Regulations therefore deals with the commencement and application of the 2022 Regulations and the disapplication and revocation of the 2011 Regulations.

Requirement to provide Information – Termly and Annual progress

- 4.37 Engagement with the wider school community, particularly parents and carers, is a fundamental principle of CfW. Parents are a key stakeholder for schools in developing and delivering the curriculum and are seen as critical to the success of a school and settings in implementing a curriculum which facilitates learners to realise the four purposes. Parents can play key role in supporting the learner to make progress, providing additional support bridging the gap between school and home. Effective engagement with parents is important in enabling this support, it can also provide assurances to parents in respect of their learner's progress, the delivery of the curriculum and the support being offered to pupils.
- 4.38 Recognising the benefits of engaging parents through ongoing communication in respect of progression, the Provision of Information Regulations place a duty on the head teacher of maintained schools (including maintained nursery schools and PRUs) to make arrangements for information on progress of the learner to be provided to adult pupils, the parents of adult pupils (if it is considered appropriate) and to the parents of all registered children in a school. To ensure parents have the relevant information needed to be able to offer support to their child throughout the academic year, Regulation 4 requires head teachers to make arrangements for providing information, as outlined in Part 1 of Schedule 2, on a termly basis.

School Leaver's Report

- 4.39 To ensure that when a pupil who ceases to be of compulsory school age leaves a school with a record of their achievements and information on their abilities and progress, which may be useful to their onward education or vocational journey, Regulation 8 requires that a head teacher makes available a school leavers report.
- 4.40 Part 4 of Schedule 2 provides the details of what information should be provided within the report and includes details of qualifications any approved relevant qualification and any unit or credit towards such a qualification

awarded to the pupil, Brief particulars of the pupil's progress and achievements in subjects (other than those in which the pupil has achieved any approved relevant qualification or any unit or credit towards such a qualification), and brief particulars of the pupil's progress in any activities forming part of the school curriculum, in the school year during or at the end of which the pupil left the school.

- 4.41 To indicate a level of authenticity of the report, the provision retains the requirements for the report to be signed by both the pupil and a teacher who is familiar with the pupil and their achievements. However, these signatures can now be provided electronically.
- 4.42 Regulation 9 provides the timeline within which the school leaver's report must be provided and mirrors the equivalent provision in the 2011 Regulations.

[Amendment to the Pupil Information \(Wales\) Regulations 2011](#)

- 4.43 The existing [Pupil Information \(Wales\) Regulations 2011](#) provide for the keeping by the head teacher of educational records.
- 4.44 In these Regulations "curricular record" is defined as a formal record of a pupil's academic achievements, the pupil's other skills and abilities and his or her progress in school, as detailed in the Schedule to the Provision of Information Regulations. With the revocation and replacement of the 2011 Regulations, a consequential amendment is required to the Pupil Information (Wales) Regulations 2011 to replace the reference to the 2011 Regulations with a reference to the Provision of Information Regulations

5. Consultation

Consequential Regulations

- 5.1. No formal consultation has taken place in relation to the Consequential Regulations as they make only technical and consequential amendments required to give full effect to the Act.

The Exceptions Regulations and the Multiple Settings Regulations

- 5.2. The proposals were developed in discussion with cross departmental policy leads, including practitioner secondees from secondary and special schools and PRU working with officials on the implementation of the Curriculum for Wales, and practitioners from a mix of schools and EOTAS settings.
- 5.3. A six week formal consultation ran from 5 April and 17 May. The consultation was promoted to an audience of key stakeholders including regional consortia, ESTYN, PRU Headteachers Group and on social media by our Communications team.

- 5.4. Though there was interest by practitioners and acknowledgement of the importance of making provision only eight responses were received to the consultation. This may reflect the fact that the proposals were consistent with existing provisions and largely in line with stakeholder expectations.
- 5.5. Responses were received from:
- a local authority
 - a local authority councillor
 - a primary school
 - ASCL Cymru
 - Colegau Cymru
 - Mudiad Meithrin
 - Children’s Commissioner for Wales
 - An unidentified respondee
- 5.6. The responses broadly in favour of the proposals for temporary exceptions. The Children’s Commissioner raised an important point about involving the learners and parents/carers in the decisions around the making, varying and revoking of these directions. Information must be shared with learners and their parents/carers, and safeguards are included in the Regulations and in the Act to allow for their input into decision making and for appeals. Clarification of this will be provided for in updated guidance. We envisage the circumstances in which these provisions would be used, which do not include additional learning needs, will require a light touch flexible approach to allow for circumstances, such as serious illness.
- 5.7. The responses were also mainly in favour of the proposals for planning and co-ordinating provision of learning and teaching for pupils registered in more than one setting. The responses highlighted the variable nature of EOTAS provision and its organisation across local authorities, for example, the different approaches used in registering pupils in junior apprenticeship and the variations of EOTAS providers. Updated guidance will be published on these provisions, but more work may be needed to ensure no pupils are inadvertently missed out from their application.

The Provision of Information Regulations

- 5.8. 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.
- 5.9. 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.

- 5.10. 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.
- 5.11. 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.
- 5.12. 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.](#)
- 5.13. The key points raised mostly related to wider feedback, which extended beyond the content of both of these Regulations. However, feedback received helped revise the drafting of both of these 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.
- 5.14. 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 amendment 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 requirements for providing information to parents on a learner’s progress within the curriculum and enabling head teachers to make decisions on temporary exceptions are key processes that already exist within the school system and sits alongside other duties and requirements placed on schools. They continue to remain important processes under the Curriculum for Wales framework. Ensuring that all learners, including some of our most vulnerable, receive the full curriculum appropriate for them when their teaching and

learning is provided in more than one setting supports inclusivity in these processes.

- 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, as well as other duties and mandatory requirements under the 2021 Act, wider curriculum guidance, as well as local circumstances. The Provision of Information Regulations, the Temporary Exceptions and the Multiple Settings Regulations take account of the level of subsidiarity provided to schools through the Curriculum for Wales 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 Curriculum for Wales' implementation in schools and settings.
- 6.3 Detailed information on the costs, benefits and risks associated with the process of curriculum design, implementation and 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 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 [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

The Education (Temporary Exceptions) (Wales) Regulations 2022

Options

- 7.1 These Regulations make very similar to provisions to those already in place under existing legislation to allow head teachers and FNNE providers the opportunity to exercise their professional judgement when flexibility is required to alleviate a child or young person's circumstances.
- 7.2 The provision made in these Regulations mean, in effect, the policy on enabling temporary exceptions will continue under the Curriculum for Wales.

Costs and Benefits

- 7.3 There are no additional costs associated with the introduction of the Education (Temporary Exceptions) (Wales) Regulations 2022. The provisions are similar to those already in place. In line with the implementation of the Curriculum for Wales they are extended to include providers of funded non-maintained nursery education (FNNE) to allow for the application of exemptions to learners in those settings.
- 7.4 Without these Regulations head teachers and FNNE providers would not be able to fully support individual learner needs and circumstances.

The Education in Multiple Settings (Wales) Regulations 2022

Options

- 7.5 Doing nothing risks children and young people educated in more than one setting slipping through the cracks by not being visible to either setting or from not receiving the full curriculum as appropriate to them.

- 7.6 Consideration was given to placing requirements on education leaders in schools and other settings, including head teachers, teachers in charge of PRU and non-PRU EOTAS providers, to work together to develop plans for learners and greater prescription on what should be included.
- 7.7 However, discussions between officials and PRU and non-PRU EOTAS practitioners highlighted the importance of not being too prescriptive about the detail to be included in plans because there are too many variables relating to the individual circumstances of pupils and provision available to them.
- 7.8 The intention of these Regulations is to place responsibility on local authorities to work with the relevant persons responsible for the pupil's teaching and learning in order to ensure settings work together for the benefit of the learner; and to share information on their progress with them and their parents or carers.

Costs and Benefits

- 7.9 There are no additional substantial costs associated with the introduction of the Education in Multiple Settings (Wales) Regulations 2022. There will be some administrative costs for local authorities associated with preparing the plans but this will vary depending on the approach they take to developing their plans and the number of learners, which make up a small cohort of learners.
- 7.10 According to the School Census from April 2021:
- 1,866 pupils were registered at two maintained schools (nursery, primary, middle, secondary or special schools); and
 - 1126 were dual-registered receiving EOTAS provision (394 receiving EOTAS provision, spending the majority of their time at school and 732 receiving EOTAS provision and have subsidiary enrolment at a school)⁸
- 7.11 Anecdotal evidence from stakeholders suggested that a number of the learners receiving EOTAS provision are dual-registered but only attend one setting.
- 7.12 The benefits to this approach will be:
- To ensure consistency and continuity for those registered in schools or settings in more than one authority;
 - making it easier for learners benefitting from PRUs or other EOTAS provision to transition back into mainstream education when they are able to do so; and
 - to reduce the likelihood that responsibility for learners will be lost between schools or settings, e.g. between EOTAS settings and schools (i.e. less ambiguity over who is responsible for the learner).

⁸ <https://gov.wales/sites/default/files/statistics-and-research/2021-09/pupils-educated-other-school-september-2020-august-2021-tables-313.ods>

Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022

7.13 Two options were considered in this assessment.

Option 1 – Do Nothing

7.14 Consideration was given as to whether the existing legislation, the 2011 Regulations, could continue to be used under CfW, to provide information to parents and carers on how their learner is doing in school.

7.15 The 2011 Regulations make provision for reporting information in respect of attainment against the existing curriculum, where learner's attainment is assessed against key stages and level descriptors, where a judgement is made at a fixed point in time within a pupil learning journey. Under CfW there will not be key stages or level descriptors and pupils will be assessed along a continuum of learning, where progression steps and descriptions of learning are used to help school to plan appropriate progression. Furthermore, the approach and requirements to provision of information as required by the 2011 Regulations was recognised as being out of kilter with the ethos of CfW and does not reflect the importance placed on engaging parents and carers across design and delivery of new curricula within CfW.

7.16 Using the existing 2011 Regulations was therefore not a viable option.

Option 2 – Introduce new legislation for providing information to parents and adult pupils

7.17 The Provision of Information Regulations will repeal and replace the 2011 Regulations.

7.18 Options were considered around the purpose of provision of information to parents and adult pupils and the intended effect.

7.19 Parents and carers are recognised as a fundamental stakeholder in CfW, with engagement with the wider school community, particularly parents and carers, a fundamental principle of CfW. Parents and those with parental responsibility are a key contributor for schools in developing and delivering the curriculum and are seen as critical to the successful implementation of a curriculum which facilitates learners to realise the four purposes. Not only do they have a role in helping to develop the vision for a school's curriculum, but they also play a fundamental role in the curriculum being realised, through the support they offer to their children.

7.20 CfW acknowledges the key role a parent/carer plays in supporting learner progression. Communicating effectively with parents/carers on an ongoing basis is an important way to foster positive relationships. This can help aid learner progression by helping parents/carers to develop a clear

understanding of how their child is progressing against the schools' curriculum, which will have been designed to provide for appropriate progression as set out nationally in the Progression Code, their future progression needs and next steps, and how they can support learning and progression within and outside the school environment.

- 7.21 Communicating effectively is also important in providing assurances to parents and carers in respect of their learner's progress, the delivery of the curriculum and the support or challenge being offered to learners to support their next steps in learning.
- 7.22 Feedback over the development of CfW framework, particularly the assessment arrangements, and more widely through direct engagement with education stakeholders, indicated that the current reporting arrangements do not support these principles of CfW and do not support parents to engage in and support their children through their learning journey.
- 7.23 The policy of a single annual written report, as currently prescribed for under the 2011 Regulations was reviewed in light of the purpose of the provision of information to parents in CfW; to enable parents to better understand and support their child's learning needs to support progression, bridging the gap between home and school. Annual written reports are usually provided towards the end of the summer term and feedback has indicated that the reports are largely written from statement banks which take account of the level descriptors within the current curriculum. These therefore lack a real focus on the individual learner and their individual needs and the providing information towards the end of the academic year limits parents' abilities to engage and support their learner across the year.
- 7.24 The review therefore concluded that the current policy did not meet the purpose of provision of information to parents within CfW.
- 7.25 In order to ensure parents are able to better understand their child's learning needs and be to provide support, it was identified that more regular and targeted feedback would be needed.
- 7.26 It is recognised that many schools and settings across Wales already communicate regularly with parents on the progress of learners in a variety of ways throughout the school year, through parents evening, use of apps, interim reports etc. However, not all schools do provide information out with the requirements of the existing 2011 Regulations, creating a lack of parity across Wales.
- 7.27 In considering how the gaps of the exist approach could be addressed to meet the needs of CfW, through engagement with practitioners, consideration was given to the best practices already in place, where parents are engaged across the school year, and the various formats that that engagement takes.
- 7.28 Taking account of feedback received through the consultation it was clear that any new requirements needed to consider the capacity of schools and

settings and would need to build on current practice. Requirements would need to provide flexibility to schools and settings to allow the provision of information to be tailored to their individual school curriculum and assessment arrangements drawing on individual school systems to support communications.

- 7.29 To facilitate parental engagement in their child's learning across the school year, provision of information on key progress and learner needs will be required termly, bringing parity to the regularity with which information is shared with parents. This is a minimum legal requirement and will not cut across or prevent more regular and ongoing communication that already exists with parents.
- 7.30 Whilst provision of information on key progress and learner needs will facilitate parental engagement, understanding and ability to provide support, it remains important that parents have a picture of the learner's overall progress across the breadth of the curriculum within an academic year, to help provide assurance to parents on the learner's progress, delivery of the curriculum and the support being offered to pupils. The requirement for provision of information in the form of an annual update has therefore been retained.
- 7.31 In recognition of the subsidiarity provided to head teachers through CfW to reflect local circumstance, the requirements in the Provision of Information Regulations provide flexibility to head teachers to determine the format in which information is provided, to ensure best practice can continue to be delivered and that schools have the flexibility to support the individual parental needs to maximise engagement and understanding to support learners.

Costs and Benefits

- 7.32 Subsidiarity is one of the fundamental principles of Curriculum for Wales and under the 2021 Act, schools and settings are required to make their own assessment arrangements to support their own curriculum developed within the Curriculum for Wales framework.
- 7.33 The Provision of Information Regulations take account of the subsidiarity provided by CfW and provides flexibility to head teachers as to how information will be provided to parents. Under the Education (Assessment Arrangements within the Curriculum for Wales) (Wales) Regulations 2022, schools will have to put in place assessment arrangements to support learner progression. It will be for schools to determine those assessment arrangements and what information is recorded and how to evidence and support understanding of learner progression. Provision of information to parents and adult pupils on progression and learner needs will be drawn from these assessment arrangements and the school systems put in place. As detailed in para 6.2, variability across the school system means that 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.

- 7.34 All schools are already undertaking annual reporting by virtue of the 2011 Regulations and many schools have already built-in systems and processes to provide more regular sharing of information of progress of learners with parents. Many schools will therefore already have the costs associated with provision of information to parents and adult pupils already built into existing costs of delivery.
- 7.35 For those schools who do not yet provide information termly, there will be some level of additional cost. However, with head teacher's responsible for deciding the format in which information is shared, and the variety of format options available to head teachers, it is not possible to quantify the potential additional cost as this will vary between settings.
- 7.36 In order to begin to quantify the range of potential additional costs, how the policy is implemented across schools needs to be monitored and reviewed. It is therefore intended that over the coming year we will work with partners across the education sector to better understand the approaches taken by head teachers to deliver of the policy and evaluate its implementation.