

Explanatory Memorandum to The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) 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. 3) Regulations 2022.

Jeremy Miles MS
Minister for Education and Welsh Language
6 July 2022

PART 1

1. Description

1.1. The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022 (“the Consequential Regulations”) make amendments to secondary 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 1 September 2022.

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

2.1 The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022 make amendments to secondary legislation made under the Education Act 1996.

2.2 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.

2.3 Where appropriate the amendments made under the Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022.

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

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.
- 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. 3) Regulations 2022 predominantly make amendments to subordinate legislation made under the Education Act 1996.
- 4.4 Part 1 of these Regulations provides for the commencement of the amendments on 1 September 2022 save as set out in the individual regulations listed in Part 2 and the definition of terminology included in the provisions.
- 4.5 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 (National Curriculum) (Exceptions) (Wales) Regulations 1995.

- 4.6 These Regulations also make a minor amendment to the Curriculum and Assessment (Wales) Act 2021 (Transitional and Saving Provision) Regulations 2022 (“the 2022 Regulations”) in order to correct an error in the definition of “child” included in the interpretation regulation – “1996 Act” is replaced with “the Education Act 1996. The 2022 Regulations made provision to allow for the phased roll out of the new CfW. Regulation 3 of the 2022 Regulations made saving and transitional provision in relation to those children and pupils who are not yet being provided with education under the new CfW.
- 4.7 In addition, these Regulations make two minor amendments to regulation 2 of the Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No.2) Regulations 2022 in response to the Legislation, Justice and Constitution Committee’s report on those regulations. They correct Welsh language definitions appearing in the English text of regulation 2, namely “the 2021 Act” and “head teacher”.

5. Consultation

- 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.

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.