

## **Curriculum and Assessment (Wales) Bill**

### **Statement of Policy Intent for Subordinate Legislation, direction making powers and guidance**

This document provides an indication of the current policy intention for the subordinate legislation, guidance and other documents that the Welsh Ministers would be empowered or required to make or issue under the provisions of the Curriculum and Assessment (Wales) Bill (the Bill). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it.

### **Section 5 – Powers to amend sections 3 and 4**

#### **Procedure: draft affirmative**

This provision gives the Welsh Ministers a power to make Regulations that amend the sections setting out the areas of learning and experience, the mandatory elements and the mandatory cross-curricular skills. This power may be used to add new areas of learning and experience, mandatory elements and cross-curricular skills; or to remove one of those areas, elements or skills, or to revise one.

It is anticipated that amendments of this type may be required over time to reflect the changing needs of pupils and indeed society. This aspect of the curriculum will need to evolve in response to changed circumstances. Therefore, it is considered appropriate to make those changes should the need arise by way of Regulations

### **Section 6 – The What Matters Code**

#### **Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a What Matters Code setting out the key concepts in each area of learning and experience in the curriculum. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

The fundamental policy intent is to set out the key concepts that must be covered by schools in their areas of learning and experience. This will assist schools to develop their curriculum. Each area of learning and experience is organised by a number of what matters statements that cover the key concepts in that area. For example, in the Mathematics and Numeracy Area of Learning and Experience there are four such statements covering the number system; algebra; geometry and data and statistics. This framework ensures an element of consistency across the country as schools are placed under a duty to ensure that both their curricula (section 6(2)) and their teaching and learning (section 6(3)) covers the What Matters Code. It is likely that amendments may be required over time to reflect the changing needs of pupils, changes to the content of an area of learning and experience, such as advances in

disciplinary knowledge, or indeed changes in society. As such it is appropriate that this detail is issued as a Code rather than being contained in the Bill.

The What Matters Statements have been developed by practitioners as part of developing the curriculum framework and were first published for feedback in April 2019. They were then refined and were published again as part of the curriculum guidance in January 2020 to enable schools to plan for the implementation of the new curriculum.

A curriculum may not be adopted by a school or setting unless it satisfies the requirements of the Code.

## **Section 7 – The Progression Code**

### **Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a Progression Code that specifies what a curriculum will need to do to ensure pupils' progression. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

The Progression Code is intended to ensure that each school's curriculum will enable pupils to progress in their learning. Each curriculum (section 7(2)) and the teaching and learning (section 7(3)) in a school must enable pupils to make appropriate progression and it can only do so if it accords with the Code.

This provides more detail about the expectations around pupil progression and it is likely that amendments may be required over time to reflect the changing needs of pupils or changes in the understanding of pupil development and progression. As such it is appropriate that this detail is issued as a Code rather than being contained in the Bill.

The Principles of Progression were published in January 2020 as part of the curriculum framework to enable schools to plan for the implementation of the new curriculum. These are found in the generic guidance and for each Area of Learning and Experience. Together these will form part of the Progression Code.

A curriculum will be deemed not to make provision for appropriate progression unless it accords with the Code.

## **Section 8 – The Relationships and Sexuality Education Code**

### **Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a Relationships and Sexuality Education (RSE) Code that sets out the themes and matters that must be contained in a school's RSE provision. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

This ensures that each school's curriculum will contain what is contained in the Code.

The RSE code will describe the high level core learning to be undertaken by pupils and children in the mandatory element of Relationships and Sexuality Education.

The RSE code will create statutory requirements in relation to what must be taught as part of RSE which will ensure that learning will be age and developmentally appropriate and it will ensure transparency of content for learners aged 3 - 16.

It anticipated that amendments may be required to the Code over time to reflect the changing needs of pupils, or changes in society. To respond to changed circumstances it is considered appropriate this detail is issued as a Code rather than being contained in the Bill.

The RSE code is currently being developed by a Working Group with a range of stakeholders and will be consulted on in the autumn of 2020.

Teaching, learning and content for RSE must accord with the Code.

### **Section 13 – Welsh Ministers' duty to publish a curriculum for funded non-maintained nursery education.**

#### **Procedure: no procedure**

The Welsh Government has recognised that childcare settings funded to deliver early education for 3 and 4 year olds, unlike schools, do not have the resources, curriculum design skills or capacity to develop curriculum and assessment arrangements. The Welsh Ministers will therefore be under a duty to design curriculum arrangements for these settings. The Welsh Ministers will be required to keep this curriculum under review and make available any future revisions.

Funded settings will have the flexibility to adopt the Welsh Ministers' designed curriculum and assessment arrangements, design their own or work with others – such as local authorities or schools – on a curriculum to be adopted.

Based on discussions with stakeholders our expectation is, despite the flexibilities to be allowed to adopt a curriculum not published by the Welsh Government, that many funded settings will adopt the curriculum which the Welsh Government will develop with the sector rather than engage in separate or distinct arrangements.

Initial development work began in June on 'enabling pathways' to address the rapid developmental changes in children during the period of learning leading to Progression Step 1. These "enabling pathways" will be designed for schools to support the Curriculum for Wales guidance and where appropriate for use by practitioners working with learners with additional learning needs who may never progress beyond Progression Step 1. They will also form the building blocks for the curriculum arrangements for funded nursery settings.

The Welsh Government will be working with a range of stakeholders including head teachers, regional consortia, Estyn, local authority early years advisory teachers, ALN and non-maintained practitioners to develop this work. Two workshops have taken place and further workshops are planned through the remainder of the year and into 2021 until the development work – including consultations – is concluded and the curriculum published next year.

## **Section 17 – Powers to make supplementary provision about curriculum adoption, review and revision**

### **Procedure: negative**

Section 17 gives the Welsh Ministers powers to make Regulations about steps that need to be taken by a school or setting before adopting a curriculum. The section also gives the Welsh Ministers the power to make Regulations setting a date by which a school or setting must have adopted their curriculum, and power to specify additional circumstances in which a curriculum must be revised.

The Welsh Ministers intend to make Regulations specifying a date by which a curriculum must be adopted. This will provide schools and providers with certainty about the timetable, ensure consistency, and permit the transition to the new curriculum arrangements to be timetabled across the education sector. This is being done by secondary legislation rather than in the Bill to allow flexibility to respond to circumstances that may affect this date nearer the time. The intention is to set a date in advance of the first of September 2022 so that the curriculum must be adopted in good time before its implementation.

The Welsh Ministers do not intend to make Regulations in respect of the other powers. Such Regulations could for instance be used to specify steps a school or setting will need to take in order to determine the suitability of a curriculum for adoption or revision. We believe there is sufficient provision on the face of the Bill in respect of these matters but it is however possible that these powers may need to be exercised if as practice develops it becomes apparent that revisions are not being made in circumstances where they should be. Or it could also be the case that the Welsh Ministers make a significant change to the curriculum in the future and use these powers to ensure that curricula are revised accordingly.

We have attempted to include provision on the face of the Bill, but it is not possible to entirely foresee how practice will develop. Therefore the power to make regulations is needed to ensure that the system remains workable in case it becomes apparent that the requirements on the face of the Bill are insufficient.

## **Section 18 – Power to make supplementary provision about curriculum and summaries**

### **Procedure: negative**

Each school and setting is required to publish a summary of their adopted curriculum. Section 18 gives the Welsh Ministers powers to make Regulations to specify information that will need to be provided in that summary.

This section also gives the Welsh Ministers powers to make Regulations about publication of the summary. This might be exercised for example, to require publication of the summary on a school's website, or to require the summary to be sent to parents and carers, or to require publication to take place by a particular date.

The key provisions are included in the Bill in terms of adoption and review. The Regulations will only be needed to set out some technical details on the matters set out above. We consider that the best place for that detail to be set out is in Regulations. A Regulation making power will allow us to amend that detail over time as appropriate.

The objective behind having this power is to ensure consistency in what information is made available about a school's curriculum, and how and when this information is communicated to parents and carers and prospective parents and carers. Dealing with this in secondary legislation will permit the approach to what is included in a summary, and to publication, to develop as it becomes clearer what information is helpful and necessary, and what methods of publication are most effective.

It is not intended to make these Regulations in implementing the curriculum. It is intended to see how practice develops and Regulations will be made if it becomes clear that there is substantial variation in summaries of curricula or crucial information is missing from these summaries that would be needed for parents and carers. Another reason that to exercise these powers would be if schools and settings ask for a consistent approach to assist them in preparing such summaries.

### **Section 25(1) – Power to impose further curriculum requirements for pupils aged 14-16**

#### **Procedure: negative**

Section 25 confers power on the Welsh Ministers to specify further requirements for a curriculum for 14-16 years olds. The power can be used to require something to be included in a curriculum, or to require something not to be included.

The power can be used to require a course of study to be provided by a school to this age group.

It is anticipated that Regulations could set out requirements as to minimum or maximum number of courses that could be studied at age 14-16.

A course of study is defined in the Bill as a course of education or training that leads to a qualification of the type specified in section 25(5) – essentially, one approved by Qualifications Wales, or designated by Qualifications Wales or the Welsh Ministers.

It is not intended to use this power at the outset as we expect that the requirement in the Bill for a curriculum to be broad and balanced will be sufficient. However, should there be evidence that some schools are offering a narrow curriculum to this age group, or are not providing courses of study that lead to certain qualifications then this power can be used to address the position.

### **Section 26(1) – Disapplication of English as a mandatory element: maintained schools and maintained nursery schools**

English is a mandatory element in the Bill. A power of determination is given to the head teacher and governing body of a school to disapply this mandatory requirement up to the age of seven. The reason for disapplication is given in the Bill as to maintain or develop pupils' fluency in Welsh.

The intention here is to enable a school to provide Welsh immersion education up to the age of seven. This is seen as part of the schools duty to design their curriculum appropriate for their learners. The provisions are designed to enable schools to practice Welsh language immersion as they do now.

This determination and the cases and circumstances to which it applies must be specified in the published summary school's curriculum. This must also detail, for those cases and circumstances, any provision that may be made for the teaching of English.

This determination can be revoked by the head teacher and governing body.

### **Section 27(1) Disapplication of English as a mandatory element: funded non-maintained nursery education**

This is the same power to disapply the mandatory element as above for funded non-maintained nursery education. Here the power is given to the provider of such education.

### **Section 33(2) Power to disapply duty to implement pupil choice**

This section specifies the grounds on which a head teacher is able to refuse a pupil's decision to pursue teaching and learning chosen by the pupil under section 24. Subsection (2) of this section confers power on the head teacher to make a determination to refuse to implement a pupil's choice of teaching and learning.

The Bill specifies the following as being grounds for a head teacher to refuse to implement a pupil's choice of teaching and learning:

- The teaching and learning is not suitable, given the educational attainment of the pupil
- It is not practicable to provide the teaching and learning, because of other choices that the pupil has made under section 24

- The amount of time spent travelling to where the learning would be delivered would have a negative effect on the education of the pupil
- Securing the teaching and learning would incur disproportionate costs
- There would be an unacceptable health and safety risk to the pupil, or others, if the teaching and learning was secured.

It is also possible for a head teacher to reverse a decision to allow a pupil to undertake chosen teaching and learning, after it has already begun, but only on the more limited grounds of:

- Disproportionate cost
- Unacceptable health and safety risk to the pupil or others.

### **Section 33(6) – Power to disapply duty to implement pupil choice**

#### **Procedure: draft affirmative**

This section specifies the grounds on which a head teacher is able to refuse a pupil's decision to pursue teaching and learning chosen by the pupil under section 24. Subsection (6) of this section confers power on the Welsh Ministers to amend these grounds by Regulations.

The grounds for a head teacher to refuse to implement a pupil's choice of teaching and learning are specified above.

It is anticipated that the grounds for refusal set out above may need to evolve over time. It is possible that future grounds may relate to whether an individual choice will offer sufficient breadth and balance. We consider it is appropriate that Regulations should be able to amend that detail as the need arises.

### **Section 34(5) – Power to disapply duty to implement pupil choice: supplementary**

#### **Procedure: negative**

Section 34 of the Bill specifies the information a head teacher must give and to whom when a determination is made under section 33 not to implement the pupil's choice of a course of study. The Bill states that the head teacher must inform the pupil and their parent of the decision and explain the reasons for the decision, what teaching and learning is offered in its place and the right to request a review or appeal.

Section 34(5) confers power on the Welsh Ministers to make further provision by Regulations. It is anticipated that Regulations made under this power may make provision about procedural matters such as time limits by which the head teacher must make a determination, or as to the procedure to be followed in making such a determination.

It is not intended to make regulations in this regard at the outset. We believe that the procedures outlined on the face of the Bill are clear about the responsibility of schools here.

However, if it becomes clear over time that pupils and parents or carers are waiting too long in respect of the head teachers' decision or that the procedures adopted by schools are causing difficulties then this power would be used to clarify the process and ensure a consistent approach.

### **Section 35(4) – Reviews and appeals relating to pupil choice**

This power of direction is given to a school's governing body to deal with appeals against a head teacher's decision not to implement a pupil's choice of a course of study under section 33 and gives them the power to implement their decision.

The governing body is given a power to direct the head teacher to take the action it considers appropriate and the head teacher is under a duty to comply. For example, in light of a successful appeal the governing body would direct the head teacher to implement the pupil's choice of course of study. The head teacher would then be duty bound to implement this decision.

### **Section 40(1) Development work and experiments.**

#### **Procedure: no procedure**

Section 40 allows the Welsh Ministers to give a direction to a school. The direction can disapply any of the implementation requirements set out in sections 29 to 32, or provide for those implementation requirements to be modified in their application to the schools.

This direction can be given only for experimental or developmental purposes.

Section 41 specifies two conditions that must be satisfied before a direction can be given under section 40.

The first condition is that the curriculum that will be put in place, as a result of the direction, will enable pupils and children to develop as outlined in the four purposes; offer appropriate progression; be appropriate to the pupils' or children's age, ability or aptitude; take into account their additional learning needs (if any); and secure broad and balanced teaching and learning.

The second condition, in the case of a school, is that the local authority has applied for the direction with the agreement of the governing body, or vice versa; or that, where no application has been made, both the governing body and the local authority agree to the direction being given. For a foundation or voluntary aided school there is no role for the local authority in this regard.



For funded non-maintained settings it is the local authority and the setting that must agree to a proposal for a direction brought by a local authority or the Welsh Ministers.

Section 42 provides more detail about a section 40 direction: it must be made in writing and published, and the schools and settings to which it applies must publish a summary of the curriculum that they will implement as a result of the direction.

The nature of this power is such that it will only be used in rare circumstances whereby we feel it would be beneficial to trial something novel. This power gives the flexibility to do this.

### **Section 43(4) – Pupils and children with additional learning**

#### **Procedure: negative**

Section 43 deals with the interaction between the curriculum and an individual development plan (“IDP”) prepared or maintained by a local authority under the Additional Learning Needs and Education Tribunal (Wales) Act 2018. It also deals with special educational provision included in an educational health care plan (“EHC”) under the Children and Families Act 2014: this is to address the position of children from England who are attending a Welsh school or setting.

This section allows an IDP or EHC to disapply or modify requirements relating to curriculum implementation, for the pupil or child to whom the IDP or EHC relates.

But this is conditional upon certain requirements being met: the local authority concerned must be satisfied that the curriculum that will be provided enables the pupil or child to develop as described in the four purposes; that it offers appropriate progression; that it is appropriate to the pupil or child’s age, ability or aptitude; and that it secures broad and balanced teaching and learning.

Subsection (4) of section 43 confers power on the Welsh Ministers to make Regulations specifying further conditions that must be satisfied for an IDP or EHC to disapply or modify curriculum requirements.

It is not intended to make Regulations here at the outset as we believe that the provisions on the face of the Bill should be sufficient to specify the conditions that need to be met when disapplying or modifying a curriculum for an individual pupil. However, should it come to light that this provision is over used or that certain parts of the curriculum are often disappplied then Regulations under this power could specify extra conditions. Regulations are the most appropriate way to do this as we will need to see how practice develops to ascertain if any further conditions would be needed and, if so, what they may be.

### **Section 44(1) and (2) – Temporary exceptions for individual pupils and children**

#### **Procedure: negative**

This section confers powers on the Welsh Ministers to make Regulations specifying cases and circumstances in which a head teacher, or the provider of funded non-maintained nursery education, may make a determination to disapply or modify the implementation of the curriculum for a pupil or child. It is anticipated that Regulations may require the head teacher or provider to be satisfied that there is not likely to be a significant change in the circumstances that give rise to the need for such a step within the prescribed period.

Any Regulations made under this section must impose conditions as set out in section 44(3). These are that the curriculum implementation requirements may be disapplied only if the curriculum that will be provided for the pupil or child: will enable the pupil or child to develop in the way described in the four purposes; will secure teaching and learning offering appropriate progression; is suitable for the age, ability or aptitude of the pupil or child; takes account of any additional learning needs of the pupil or child; and secures broad and balanced teaching and learning.

Section 44(4) permits the Regulations to require additional conditions to be met before a determination disapplying or modifying the implementation of the curriculum is made by a head teacher or provider.

Section 45 of the Bill goes into more detail about Regulations under section 44. It specifies that Regulations cannot allow a determination to be made on the grounds of a pupil or child's additional learning needs. It requires the Regulations to specify that a determination is to have effect for a fixed period of no more than six months, or for an ongoing period that must be brought to an end within six months. It allows the Regulations to make different provision about how long a second or subsequent determination made in respect of the same pupil or child will have effect for, provided that second or subsequent determination meets certain criteria about when it is made.

The Regulations may allow the person making this determination to vary or revoke the determination and may set cases, circumstances or conditions for this.

The purpose of these Regulations is to allow temporary exceptions to be made for pupils who do not have additional learning needs, for example if a pupil had been ill for some time.

Sections 44 and 45 reflect existing provision in Part 7 of the Education Act 2002.

### **Section 47(8) – Appeals about temporary exceptions for individual pupils**

#### **Procedure: negative**

Section 47 of the Bill provides for appeals by a pupil or parent where: a head teacher has decided to make, vary or revoke a determination as described in section 44; or where a head teacher has failed to make a determination following being requested to do so.

Subsection (8) of section 47 confers power on the Welsh Ministers to make further provision about these appeals in regulations. It is anticipated that the Regulations

would make provision around procedure to be followed and time limits for appeals. The detail of that is best suited to Regulations as it sets out technical details which may change over time.

As this reflects current legislation we expect that schools already have a process in place. Therefore it is not anticipated using these powers at the outset to make further provision about the appeals process but if issues present themselves over time as practice develops then this power could be used specify more detail if required. We are considering whether it would be helpful to use these powers at the outset to make Regulations specifying time limits for appeals.

### **Section 48(6) – Appeals about temporary exceptions for individual children individual children**

#### **Procedure: negative**

These are the same powers as Section 47(8) but for funded non-maintained providers and our intention is the same.

### **Section 50(1) – Power to make further provision for further exceptions**

#### **Procedure: negative**

This section confers power on the Welsh Ministers to make Regulations that disapply or modify the curriculum implementation requirements in specified cases or circumstances. The Regulations could be used to permit another person – for instance a head teacher – to exercise their discretion about disapplying or modifying a requirement.

This provision is designed to reflect the existing provision in section 112 of the Education Act 2002. That power was used to disapply aspects of the national curriculum when trialling the foundation phase in certain schools. It is anticipated that the power would be used for similar purposes.

This will also allow flexibility to cover situations whereby part of a pupils' curriculum is commissioned and possibly undertaken at another place, for example at a further education institution, due to their particular interests. Some flexibility in terms of curriculum requirements may be needed to enable this to happen. These may be very individualised circumstances and it is generally best to allow head teachers to decide. This power to make Regulations may be used to specify the circumstances of modification or disapplication to ensure that curriculum content is not modified or disappplied inappropriately.

The Welsh Ministers will decide whether or not to use this power when individual school curricula are available. This will determine whether there is a need to use this power or not.

## **Section 58(1) – Power to make provision in relation to assessment arrangements.**

### **Procedure: negative**

Under this section the Welsh Ministers have powers to make Regulations about assessment arrangements relating to the relevant curriculum as defined in sections 11, 12, 15, 16, 52, 53 and 55 of the Bill. In relation to these curricula, these are arrangements for assessing: the progress made by pupils and children; the next steps in their progression; and the teaching and learning needed to make that progress.

These Regulations may require a relevant person to make and implement assessment arrangements; specify these arrangements; evaluate their effectiveness; keep them under review; and revise them. A relevant person under these Regulations is a head teacher, school governing body, provider of funded non-maintained nursery education, teacher in charge of a pupil referral unit, management committee of a pupil referral unit, a person providing education otherwise than at school.

The intention here is to make Regulations so that schools, funded non-maintained settings, pupil referral units and providers of education other than at school make assessment arrangements to support their curriculum.

For the most part these Regulations would not be overly prescriptive. They will require the relevant person to consider and put in place assessment arrangements that are most appropriate to their local curriculum, context and learners. The statutory guidance that the Welsh Ministers will issue on assessment under section 66 of the Bill will help support schools by providing key principles to ensure a degree of consistency in their approach.

There will be a slight variation for funded non-maintained settings in that the guidance is expected to be non-statutory. We recognise that, in the same way that it is unreasonable to expect all such settings to design their own curriculum, the same can be said for assessment arrangements. Therefore the Welsh Government will publish new curriculum and assessment arrangements for the sector.

It is intended to use these Regulations to require certain assessments to be taken nationally, for example the online personalised assessments or a future baseline assessment. In these cases, Welsh Ministers will be more prescriptive in specifying when and how these arrangements are to be made and implemented, as well as how their effectiveness is to be evaluated.

This is consistent with the current approach to assessment arrangements, with the detail of the provisions outlined in orders and Regulations made under the powers set out in section 108 of the Education Act 2002.

The assessment part of the curriculum guidance published in January 2020 was developed by an Assessment Advisory Group. Membership of the group included practitioners from both English and Welsh medium Primary, Secondary, and Special schools and Foundation Phase funded non-maintained settings, as well as academics

and representatives from Regional Consortia, Estyn and Qualifications Wales. This group will provide advice to the process of developing Regulations to ensure that they are consistent with the ethos of Curriculum for Wales and that the requirements are practical from a practitioner perspective.

## **Section 59(1) – Promoting and maintaining understanding of progression**

### **Procedure: no procedure**

This is required to put in place a process that ensures professional dialogue takes place within and between schools for practitioners to develop and maintain a shared understanding of progression. It is essential for practitioners to undertake this process in order to ensure equity and a level of consistency for learners in terms of their progression. This is to replace the current moderation process which is currently provided for via section 108 of the Education Act 2002 and National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) (Wales) Order 2015.

In keeping an adopted curriculum under review a head teacher must have regard to information derived from any assessment arrangements implemented by them under Regulations made under section 58. The process of promoting and maintaining understanding of progression is therefore a key process that will support schools to consider how their curriculum is supporting learner progression.

It is intended to direct head teachers and school governing bodies to put in place arrangements to ensure that a process to promote and maintain an understanding of progression is undertaken both within their school and between the related secondary school and its feeder primary schools. The focus of these discussions between specified teaching practitioners would be to develop and maintain understanding of progression as articulated in their adopted curriculum.

It is also intended to direct head teachers and governing bodies to ensure that the relevant staff within their school, as well as representatives from their cluster group of schools, meet at least once a year for the purpose of developing and maintaining understanding of progression.

It is also possible to specify the time period and the content of the meetings. By this we mean that over an appropriate period of time, but probably not exceeding three years, head teachers and governing bodies would be required to ensure the process undertaken within and between schools cover the full breadth of the curriculum. Regulations may also specify the staff that must attend the meetings either by reference to persons (i.e. head teacher, Additional Learning Needs Co-ordinator) or a description of the expertise of a member/members of staff to ensure that the breadth of the curriculum is covered.

Regulations may also require head teachers and governing bodies to take account of the outcomes of these discussions within and between schools when reflecting on their curriculum, assessment arrangements and learning and teaching within their school.

It is providers of funded non-maintained nursery education nor pupil referral units to put such a process in place with their related primary schools. However schools will be encouraged to engage with their relevant funded non-maintained settings and encourage them to become members of a group whose remit is to develop across the 3-16 continuum. This advice to schools will be outlined in statutory guidance to which head teachers and governing bodies will have to have regard. Although funded non-maintained providers will be encouraged to take part in such a process, it will not be a requirement for them.

### **Section 66(1) – Duty to have regard to guidance**

#### **Procedure: no procedure**

Section 66 confers power on the Welsh Ministers to issue guidance about the exercise of functions (i.e. powers and duties) conferred by the Bill, or by Regulations made under it. It specifies persons who are required to have regard to this guidance: head teachers, school governing bodies, providers of funded non-maintained nursery education, teachers in charge of pupil referral units, management committees of pupil referral units, providers of education under section 19A of the Education Act 1996 otherwise than at school, and local authorities (This section of the 1996 Act, inserted by Schedule 2 to the Bill, requires a local authority to arrange for education to be provided to children who, because of illness, exclusion or some other reason not receive suitable education unless such provision is made.).

Before issuing the guidance, the Welsh Ministers must consult those they think appropriate.

This is a general power needed so that the Welsh Ministers are able to issue relevant guidance when the need requires.

An example of this will be guidance on assessment arrangements such as that published as part of the curriculum guidance in January 2020 'Supporting learner progression: assessment'. Further guidance on assessment will be developed for through a process of co-construction with practitioners supported by other experts with experience and expertise This expected to be made available in September 2021.

### **Section 67(1) – Power to make provision for children receiving education in more than one setting etc.**

#### **Procedure: negative**

This section confers power on the Welsh Ministers to make Regulations about teaching and learning for learners who receive education in more than one setting. The section makes provision for various different ways in which this situation may arise. A child may be a registered pupil at a maintained school, maintained nursery school or a pupil referral unit, but also receive education at another such setting, or receive education otherwise than at school under Section 19A of the Education Act

1996. (This section of the 1996 Act, inserted by Schedule 2 to the Bill, requires a local authority to arrange for education to be provided to children who, because of illness, exclusion or some other reason not receive suitable education unless such provision is made.)

This section also permits Regulations of this type to be made about other children of compulsory school age who are described in the Regulations themselves. This provision is needed to ensure that the Regulations may make provision about teaching and learning to be provided to children who are receiving part-time education, but not education in more than one setting. An example might be a child who is recovering from illness and receives only two hours of education a week, at home. The curriculum requirements in the Bill would not be appropriate for a child in this position and so provision will need to be made in the Regulations about what criteria the education should meet. However, due to the large number of permutations possible, in this context, and the level of detail that will need to be entered into, it is considered necessary to deal with the position of this small class of children by way of the Regulations rather than on the face of the Bill itself.

At present there is no definition of full time education in legislation. It is anticipated that in prescribing some of the matters set out above there may be a need to define that in Regulations made under this section. It is anticipated that will be done by reference to a number of hours that will be deemed to constitute full time education.

These powers can also be used to make Regulations regarding the progress of children of this type, the next steps in their progression, and the teaching and learning needed to make that progress.

These powers may confer functions on a head teacher of a maintained school or a maintained nursery school; a school governing body; the teacher in charge of a pupil referral unit; the management committee for a pupil referral unit; a person who provides teaching and learning for a child otherwise than at school; a provider of funded non-maintained nursery education; and a local authority in Wales and apply, modify or disapply provisions made by or under this Bill.

In these situations it is expected that providers would work together to decide how provision in multiple settings will interact so that the learner receives a full curriculum. Regulations will describe the mechanism of this process in more detail as well as to set expectations. However, more work is needed due to the potential number of different cases here. It is intended to work with various settings to develop these Regulations to ensure that these learners receive a full curriculum where possible.

## **Section 70(1) – Power to make additional provision to give full effect to this Act**

### **Procedure: negative**

This section confers power on the Welsh Ministers to make supplementary, incidental or consequential provision, in Regulations, where they think it necessary or appropriate to do so in order to give full effect to provision made by the Bill, or by

Regulations made under the Bill, or in consequence of any such provision. They may also make transitory, transitional or saving provision in the same circumstances.

For example, the Additional Learning Needs Education Tribunal (Wales) Act 2018 is not yet fully commenced. There is to be a phased implementation of the ALNET Act and as a result, by September 2022 there will be some children in respect of whom the current SEN law will still apply, rather than the ALNET Act. We have drafted the Bill provisions on the basis that the ALN system will apply (as well as there being children with EHC plans). For children who are still subject to the SEN system when the Bill's provisions come into force, transitory provision could be made under the power in draft section 70 of the Bill so that statements may disapply a school's curriculum.