



Your ref: Curriculum and Assessment (Wales) Bill: Stage 1

Lynne Neagle MS
Chair of Children, Young People and Education Committee

5 November 2020

Dear Lynne,

Thank you for your letter dated 22 October following on from my oral evidence on the general principles of the Curriculum and Assessment (Wales) Bill at the CYPE Committee session.

I have responded below to your remaining questions, and to my commitments on 21 October to provide;

- an explanation of why the Welsh Government feels it would be inappropriate to place duties on relevant persons/bodies exercising functions under the Bill to have due regard to the UNCRC and that such duties should only be on the government and Ministers;
- details of the amendment(s) you intend to table, should the Bill progress to Stage 2, in respect of requirements to teach English prior to age 7, enabling Welsh immersion;
- an update on the estimated costs of the Bill following the resumption and completion of relevant work with stakeholders.

UNCRC

The UNCRC is aimed at states and, accordingly, it is for Governments to ensure compliance through their laws, administrative actions and other appropriate measures. This is an important principle and, unless the state is directly providing the service, this Convention is not targeted at frontline providers of service.

The Welsh Government, as required by 'The Rights of Children and Young Persons (Wales) Measure 2011', has considered children's rights and ensured they are built into the Bill. By complying with the duties in the Bill, practitioners will give effect to the rights described in the Convention. The Bill in its current form adopts an approach which is designed to ensure

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

that the interests of individuals are protected; this will occur through the imposition of detailed duties.

A general due regard duty on persons or bodies exercising functions under the Bill would not in itself lead to improved outcomes for children and young people. It would not guarantee a particular action or result and could, in practice, have the opposite effect and work against the well-intended aims of such a duty. It would also create a new area of potential litigation and we suspect that the focus of such litigation would be on procedural failure on behalf of local authorities and governing bodies. Some legal challenges might be successful on that basis but again, given the due regard duty, it is questionable if this would lead to any positive change on the ground for children. We think the imposition of direct duties, framed in the context of the Welsh Ministers' own duty to have regard to the UNCRC, will lead to better, discernible outcomes and increase accountability.

If we were to place a due regard duty directly on those exercising functions under the Bill, we risk distracting frontline practitioners from supporting learners by creating layers of red tape and bureaucracy – teachers, schools and governing bodies would have to evidence that they have taken the Convention into account in their interactions with all children and young people with 'better' discernible outcomes for children being questionable. It is specific and practical duties on public bodies that will result in improved outcomes and this is the approach we have taken in the Bill. For example, in relation to the provisions in the Bill concerning pupil choice and the power provided to head teachers to make a determination that the duty to secure teaching and learning does not apply. The provisions firstly set out the finite circumstances under which a head teacher can make such a decision (section 33). Those grounds have been developed and formulated by the Welsh Ministers and are considered to strike a fair balance between the right of the pupil to a choice of what they study and the duty on the head teacher to design and effectively implement a curriculum in accordance with the Bill's requirements. The head teacher must then communicate precise information to the pupil concerned about the reasons for that decision (section 34). There is a review mechanism and an appeal mechanism which are available to the pupil concerned and the parent following which information regarding those decisions be provided to the pupil concerned (section 35). Additionally, regulations can be made by the Welsh Ministers pursuant to the powers in section 34 and 35 and they would have a duty to have regard to the Convention when making those regulations. This is an example of functions specifically placed on head teachers and governing bodies where the provisions set out a fair and transparent process which pays due regard to and respects children's rights.

Under the Bill, the What Matters Code (section 6) will set out the key concepts for each area of learning and experience (section 3). The statements of what matters in the Humanities AoLE published in January include the need for learners to understand their rights and engage with the concept of rights more generally. We would expect this to be a mandatory part of every school's curriculum. Supporting this, the proposed Curriculum for Wales published in January provides clear guidance on human rights learning and education. This includes explicit reference to children's rights and the UNCRC and was developed in close collaboration with the Office of the Children's Commissioner. Pursuant to section 66, headteachers and governing bodies of schools will be obliged to design, adopt and implement a curriculum that includes learning on children's rights and the UNCRC.

Stage 2 amendments – English

I am engaging in a short consultation on the mandatory element of English in the Bill. I will publish this consultation imminently, to ensure that I have taken the widest range of views

on this before Stage 2 commences. Subject to the outcome of that consultation I may lay amendments to the Bill to make English mandatory from age seven. This means that before age seven English will be discretionary for all schools. This would bring the Bill into line with the current Foundation Phase and its child development underpinnings in that formal subjects are more appropriate from age seven onwards, before then learning should be experiential. However, the Schools Standards and Organisation (Wales) Act 2013 will still apply to regulate changes in the language of instruction at schools.

Welsh language will remain mandatory from 3 years.

This will enable Welsh language immersion to continue and ensure that Welsh is given appropriate recognition in the curricula of schools and settings that do not practise Welsh language immersion. This is also in line with the current Foundation Phase where schools deliver the Languages, Literacy and Communication Skills Area of Experience in English or Welsh but those doing so in English are also required to deliver the Welsh Development Area of Experience.

Estimated costs

A number of key stakeholders were invited to submit additional evidence to inform the costs identified in the RIA that was submitted to the Senedd on 6 July 2020.

Officials met with representatives from the further education sector in August 2020 who shared thoughts on the potential impact on the post-16 education system. These can be grouped as follows:

- financial implications for training the post-16 sector;
- the potential need for additional teaching hours in some subjects should certain areas of knowledge not be gained from the new compulsory curriculum; and
- the need to invest in Welsh language skills development in FE. for example, there may be further need for transition activities to be completed in order to ensure effective preparation onto post-16 courses for specific subjects.

Colegau Cymru recognises these issues do not necessarily form part of the financial scope of the Bill which focuses on the compulsory curriculum but consider these are costs that will need to be factored in to make the new curriculum succeed in its aims, and the Welsh Government is seeking to address these points.

Work is ongoing to identify potential costs resulting as a change in qualifications to awarding bodies, and how these may impact on exam centres. You will appreciate that the current situation with exams caused by the pandemic continues to make this exercise extremely challenging. Qualifications Wales have a further consultation on qualifications for the new curriculum due out in the New Year 2021 called Qualified for the Future. As their work progresses on qualifications for the new curriculum proposals will be subject to a Regulatory Impact Assessment and any costs of the new qualifications to awarding bodies, schools and other parts of the sector will be looked at in detail.

We have agreed funding for the Church in Wales and the Catholic Education Service to develop guidance to support the delivery of the new curriculum. They maintain that the requirements for them to deliver both agreed syllabus RVE and denominational RVE would mean additional costs and resources for their schools. Work on this continues to ensure the requirements on schools of a religious character to apply each of the two required syllabi are appropriate. Financial implications will be met from budgets committed to the realisation of the new curriculum.

No other additional costs have been identified by WLGA, ADEW, Regional Consortia, ITE providers, Estyn or WASACRE.

I will also write to the Finance Committee to set out the above in more detail.

Questions:

The Bill's approach

- ◆ *Do you remain fully confident that the approach the Bill sets for the new Curriculum for Wales, providing a high degree of flexibility to schools and discretion to headteachers through the ending of a heavily prescribed national curriculum, is the best means of achieving school improvement and raising standards across the board? You have pointed to the shortcomings of the current system as part of the reason for change but how can you be certain that this particular form of change will improve, rather than worsen, school standards and performance?*

It is critical to understand to understand schools' flexibility in context. The Bill of course provides greater flexibility to schools as they will be required to design their own curriculum and assessment arrangements: I intend that this will empower schools and practitioners to deliver what is right for their learners, using their own professional judgements, in the context of their local communities. However, the Bill and the Curriculum for Wales guidance together establish a robust framework in which schools will need to operate. The mandatory What Matters Code and Progression Code will be clear on the key concepts for learning and progression, already articulated in the statements of what matters.

In many areas there will be detailed guidance to support this: for example, "Designing your Curriculum" gives detailed support to schools in how to select topics and specific learning. This scaffolding is critical to ensure equity within the system and consistency across the system, including to close the attainment gap and increase standards. There are of course fundamentals which must be part of every school's curriculum. For instance, the statements of what matters set out the key concepts which underpin all learning. Through descriptions of learning, the guidance sets out the fundamentals which will enable all learners to progress.

While this framework will set out these fundamentals, it doesn't prescribe which specific topics and activities should be taught at what point. It does not and should not provide a product that can be delivered 'off the shelf'. Instead, our new approach recognises:

- within the national framework, schools and practitioners are best placed to make decisions about the needs of their specific learners, including choosing topics and activities which will best support their learning;
- the importance of meaningful learning. A prescriptive curriculum focused on covering topics does not guarantee meaningful learning, only that certain topics are covered to varying extents. Instead, the Curriculum for Wales guidance articulates what concepts and essence of learning should underpin a range of different topics, learning activities and acquisition of knowledge;
- the need for innovation and creativity. Practitioners should be empowered to select content, enabling them to use their professional skills to drive improved learning and outcomes for their learners

It is for these reasons that the framework does not try to prescribe a full list of specific topics or activities. That is not to say that the specific topics or activities are unimportant. Instead, the Curriculum for Wales guidance sets out the essence of learning which should underpin them.

Building on the work and recommendations of the OECD, it is critical that we understand the success of the reforms: how successfully the reforms are being realised in schools and to what extent that realisation is having an impact on wider outcomes. Supporting this, the update to Our National Mission published in October sets out plans for an implementation plan and a national network of practitioners, both of which are critical to ensuring consistency across schools and understanding progress at a national level.

One of the enabling objectives of the new curriculum is new 'robust evaluation and accountability arrangements'. Underpinning the new arrangements will be a broad range of high quality information about schools, and other parts of the system, which will need to be used in a more timely, intelligent and supportive way. The new evaluation system will be in place to ensure that better captures the whole learning experience, learner progress and our ambitions for the new curriculum.

Part of the next phase of this work will be to initiate a research project to consider future evidence needs to support self-evaluation and continuous improvement at all levels in the school system. Through the new evaluation and improvement arrangements, we propose develop a better understanding of the whole learning experience, learner progress and our ambitions for the new curriculum.

I want this to be wider than defining standardised performance measures. The aim will be to help identify appropriate information needed for different purposes in each part of the school system.

An important element of the evaluation and accountability arrangements will be Estyn school inspections. School inspections will evolve to align with the changes to the curriculum and the new evaluation and improvement arrangements.

Estyn will continue to consult widely with stakeholders and pilot any new arrangements before anything is implemented. However, the proposal is that they will be more frequent, to give regular assurances to parents and other stakeholders, including schools themselves, about the standards being achieved and priorities for further improvement.

In addition, I will continue to invite and welcome scrutiny of school standards in Wales at a national level. I said in 'Our national mission' that it was my intention to invite the OECD to carry out further reviews at key points along our national education reform journey, as part of an ongoing relationship, and I have kept that commitment. Three-yearly PISA results also give us an indication of the progress we are making, as well as being a valuable source of data and analysis.

- ◆ *You have explained how matters such as mental health and well-being, and equality and diversity, will be taught under the Curriculum for Wales, through the AoLEs, What Matters Code and the statutory guidance, arguing there is no need for them to be included on the*

face of the Bill. Why is this approach not regarded as sufficient in the case of Relationships and Sexuality Education (RSE) and Religion, Values and Ethics (RVE), which are both mandatory elements specified on the face of the Bill?

Our vision for Wales is for a fully-inclusive education system where all learners have equity of access to learning and experiences that meet their needs and enable them to participate, benefit from and enjoy education.

Through the What Matters Code, schools will be required to embed key concepts of learning in their curricula. The Code will be aligned with key elements of the statements of what matters. This ensures a level of breadth and balance in every school's curriculum, requiring it to embed key learning concepts at every age and stage and that every curriculum is designed within a robust national framework.

RSE and RVE areas have been included on the face of the Bill due to their significance as subject areas in contributing to the four purposes and wider Welsh Government priorities. An independent expert panel recommended that RSE should be a statutory part of the new curriculum for Wales in order to encourage schools to engage with the broader range of topics identified by the panel and enhance the new curriculum's focus on health and well-being.

The Humanities AoLE provides contexts for children and young people to learn about people, place, time and belief. RVE is a critical element of this because it offers a range of disciplinary approaches used by learners to critically engage with a broad range of religious and non-religious concepts. The intention is to ensure all children and young people are provided with the scope to explore Wales' historical and contemporary relationship to philosophy and religious views, including non-religious beliefs. For this reason key stakeholders and I agree that such an important subject area should be on the face of the Bill.

RSE and RVE therefore have quite unique challenges as subject areas. There is a risk that adding themes will lead prescription on the face of the Bill, which would risk undermining the key principles of the purpose led Curriculum for Wales. This would also undermine the purpose of the What Matters Code which will embed these themes as key concepts within the curriculum. We must ensure, as I and key stakeholders have set out in oral evidence sessions with the Committee, the Bill does not become a list of subjects or themes.

Religion, Values and Ethics (RVE)

- ◆ *We have received evidence from faith organisations that although the denominational RVE provided by voluntary aided schools is already, and will continue to be, "pluralistic", requiring them to design and deliver (if requested) RVE **that accords with** the agreed syllabus may cause individual schools to be in breach of their trust deeds. Is this your understanding of the position?*

The trust deeds have not been shared with us. It is not a requirement for Welsh Government to review the trust deeds of each school, and we cannot therefore be certain they are pluralistic.

Case law and the European Convention on Human Rights requires that pluralistic religious education must be available for all learners. The Bill therefore provides parents with the right to choose pluralistic religious education for their child including those who attend schools of a religious character.

The Bill ensures compatibility with Convention rights while ensuring schools of a religious character can continue to teach religious education in accordance with their denominational ethos.

- ◆ *Is it possible for denominational RVE to **accord with** the agreed syllabus, even where the denominational RVE is pluralistic?*

Of course, I recognise that denominational RVE may well contain much of the content in the agreed syllabus, however, the Bill need to be able to guarantee all learners have access to pluralistic RVE. The legislative framework ensures that pluralistic RVE is available for all learners, via the agreed syllabus.

- ◆ *If it is not possible, does it follow that voluntary aided schools will always have to design two syllabi (one that accords with the schools trust deed/tenets of the religion, and one that accords with the agreed syllabus)?*

I have been clear that it is for schools to consider how they design a curriculum which meets the needs of their learners. The Bill makes provision which requires that “additional provision” is made that accords with the agreed syllabus in circumstances where the denominational syllabus does not accord with the agreed syllabus.

We recognise these changes will have an impact on schools of a religious character, although we understand that the number of parents who previously withdrew their child from RVE was negligible our expectation is that this will be mirrored with this proposal.

SACRES in each local authority support schools in the delivery of agreed syllabus RVE. And schools can consider how they could collaborate with other schools in the provision of RVE. The supporting draft framework for RVE will provide guidance for all schools in applying an agreed syllabus when designing their curriculum.

My officials continue to work closely with the Catholic Education Service and the Church in Wales, on the implementation of the bill, and funding has been allocated to allow them to develop further guidance to support denominational RVE in schools.

- ◆ *Why is the position different for voluntary controlled schools, who are required to design and deliver RVE **having regard** to the agreed syllabus? Does the fact that they only have to **have regard** to the agreed syllabus mean that it is easier for them to provide one syllabus that does this and, at the same time, **accords** with the school’s trust deed/tenets of the religion?*

The duty for voluntary aided schools to deliver RVE in accordance with an agreed syllabus on request, is consistent with the duty for these schools to deliver RVE in accordance with their trust deeds.

The duty in relation to an agreed syllabus is to deliver RVE in accordance with an agreed syllabus which has been designed locally by the SACRE and Agreed Syllabus Conference for that area.

A duty to have regard to an agreed syllabus provides a degree of flexibility for voluntary controlled schools in their application of an agreed syllabus. This is not the approach taken for voluntary aided schools, the intention is to make their requirement for delivering the agreed syllabus consistent with that as the RVE in accordance with their trust deeds.

- ◆ *You said that no formal data is collected on the number of parents withdrawing their children from sex education lessons at present but that, anecdotally, it is believed to be minimal. Does the same apply to the number of parents withdrawing their children from religious education lessons at present?*

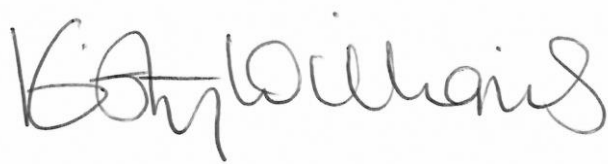
That's correct, there is no formal data collected relating to the right to withdraw from religious education, but I understand from education partners and stakeholders including the Church in Wales and Catholic Education Service that anecdotally it is also minimal. However, the right is a blanket right, and parents are not obligated to provide their justification for withdrawal, nor are schools obligated to ask this.

- ◆ *Given that this is a bespoke Curriculum for Wales, why does section 62 of the Bill refer to religious traditions and non-religious philosophical convictions in "Great Britain", rather than "Wales", in the requirements for RVE?*

The provision made in the Bill in this regard is consistent with current provision on the agreed syllabus arrangements in the Education Act 1996 which references Great Britain. I have asked my officials to consider whether this is something which could be revisited for government amendments at Stage 2.

I hope that the above response has answered your outstanding queries and will sufficiently contribute to your report, due for publication on 4 December. If you have any further points to discuss, I would welcome further dialogue.

Yours sincerely



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