

Kirsty Williams MS
Minister for Education

4 August 2020

Dear Kirsty

Curriculum and Assessment (Wales) Bill

Thank you for accepting our invitation to attend the meeting of the Legislation, Justice and Constitution Committee on 5 October 2020 for the purpose of Stage 1 scrutiny of the Curriculum and Assessment (Wales) Bill.



In advance of that evidence session, we would be grateful to receive your response to the questions set out below, by Friday 18 September 2020.

Human Rights



1. Are you content that the Bill as a whole is compatible with the European Convention on Human Rights?
2. The Bill makes no provision for parents to be able to withdraw their children from Religion, Values and Ethics ("RVE") or Relationships and Sexuality Education ("RSE"). Are you satisfied that this is compatible with parents' rights to respect for their religious and philosophical convictions under Article 2 Protocol 1 (right to education) and their right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights?
3. What safeguards exist within the Bill (or more widely) to seek to ensure that both the RVE and RSE curricula are-
 - a) designed in a way that is objective, critical and pluralistic, and
 - b) delivered in a way that is objective, critical and pluralistic,thereby complying with Convention rights?
4. The Bill treats schools with a religious character differently to those without, when designing and implementing the curriculum, so far as it encompasses the mandatory element of RVE.
 - a) What is the justification for this?
 - b) Are you content that this does not raise any human rights issues?



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Bill provisions

5. Sections 6 to 8 of the Bill require the Welsh Ministers to prepare codes relating to What Matters, Progression and RSE, which any curriculum implemented for learners must adhere to. Much of the detail of the curriculum will be contained in these codes. Can you explain why the codes are subject to the negative rather than the affirmative procedure?

6. Section 72(6) of the Bill allows consultation on the codes, required by section 72 (2)(a), to be carried out before section 72 comes into force. Do you intend to make use of this provision?

7. Section 17(a) of the Bill enables Welsh Ministers to make regulations about steps that need to be taken by a school or setting before adopting a curriculum. Section 17(c) provides a power to specify additional circumstances in which a curriculum must be revised. The Statement of Policy Intent ("SOPI") confirms that the Welsh Ministers do not intend to make use of these powers and states that Welsh Government "*believe there is sufficient provision on the face of the Bill in respect of these matters...*". Given that you believe there is sufficient provision on the face of the Bill, can you confirm why the powers in section 17(a) and (c) are necessary?

8. Section 25(1) of the Bill confers power on the Welsh Ministers to make regulations on additional curriculum requirements for learners in school years 10 and 11. The SOPI states that the power could be used to require schools to provide a particular course of study in the event the curriculum is not sufficiently broad and balanced.

- a) In the event some schools offer a narrow curriculum for learners in school years 10 and 11, it may be too late for those learners by the time the issue has been brought to the attention of the Minister and any regulations have been made. For that reason, what consideration was given to placing such requirements on the face of the Bill?
- b) Regulations under section 5 of the Bill which are concerned with mandatory aspects of the curriculum are subject to the affirmative procedure. Can you confirm why the negative procedure is considered appropriate for regulations made under section 25(1)?

9. Section 26 of the Bill enables headteachers and governing bodies of maintained schools and maintained nurseries to disapply English as a mandatory element of the curriculum up to school age 7, where it is in order to develop or maintain pupils' levels of fluency in Welsh. Can you confirm whether any determination needs to be made jointly by headteachers and governing bodies and what happens in the event of a disagreement between them?

10. Section 34 of the Bill specifies the information a head teacher must provide when a determination is made under section 33 not to implement the pupil's choice of a course of study. Section 34(5) enables Welsh Ministers to make further provision by regulations. The SOPI provides that regulations may deal with matters such as time limits or procedures, but that it is not intended to make regulations at the outset as there is sufficient information on the face of the Bill. There is no information on the face of the Bill as to time limits or procedures. Given that this will impact pupils embarking on GCSE



examinations where any process will need to be timely, can you confirm what consideration was given to placing more detail on the face of the Bill or requiring rather than permitting regulations to be made?

11. Section 40 of the Bill allows the Welsh Ministers to give a direction to a school disapplying or modifying any of the implementation requirements set out in sections 29 to 32 for experimental or developmental purposes. The statement of policy intent provides that it will only be used in rare circumstances.

- a) Can you provide some example circumstances?
- b) Can you confirm how this power differs from the power in section 50(1) of the Bill which would also allow for disapplication or modification of the curriculum?

12. Section 50(1) gives the Welsh Ministers a power to make Regulations that disapply or modify the curriculum implementation requirements in cases or circumstances specified in the regulations. Section 50(2) allows the Regulations to permit another person to exercise their discretion about disapplying or modifying a curriculum requirement. What safeguards does you envisage would be in place to ensure there is proper exercise of that discretion?

13. Section 47(6) of the Bill provides Welsh Ministers with a power to make regulations about the procedure to be followed and time-limits in respect of appeals about temporary exceptions for individual pupils. The SOPI states that the Welsh Government currently have no intention to make regulations dealing with procedure as schools already have processes in place. The SOPI also states that consideration is, however, being given to using the powers to set time-limits. Given the impact that such decisions could have on an individual pupils' education, could you confirm whether any consideration has been given to placing time-limits on the face of the Bill?

14. Section 67(1) of the Bill provides a wide power for Welsh Ministers to make regulations about teaching and learning for learners who receive education in more than one setting. The SOPI gives one example of how the power may be used, which is to define for the first time in education legislation the number of hours which are deemed to constitute full-time education. Why is the negative procedure appropriate for such a wide power which would enable fundamental changes (e.g what is meant by full-time education) to be made?

15. Section 70(1) of the Bill provides the Welsh Ministers with a power to make regulations to amend primary and secondary legislation where necessary or appropriate to enable the new curriculum framework to operate. Why is this provision subject to the negative procedure when it contains power to modify primary legislation?

16. Section 79(2) of the Bill enables the Welsh Ministers to make orders providing for commencement of certain provisions in the Bill. The Committee's previous recommendations on this matter on other Bills have been that commencement orders that include 'transitory, transitional or saving provision' should be subject to the negative procedure. What assessment was undertaken before deciding that commencement orders would not be subject to any Senedd procedure?



Impact Assessments

17. The Equality Impact Assessment undertaken (paragraph 9.20 of the Explanatory Memorandum (EM)) states that the new curriculum will have a positive impact as regards a number of protected characteristics including disability, race, sexual orientation, and low income households. Paragraph 9.41 of the EM also states that it was not envisaged that a full Rural Proofing Impact Assessment was needed at present. Paragraph 9.49 of the EM, in relation to the Health Impact Assessment undertaken, says that learners will be provided with a range of learning which supports them to develop and maintain positive health affirming behaviours. However, paragraph 9.50 adds that the flexibility of the new curriculum may result in a variation of provision across different communities which may place some learners at risk because of their background or geography. Can you explain how the concerns expressed in paragraph 9.50 of the EM align with the statements in paragraphs 9.20 and 9.41?

18. Paragraph 9.44 of the EM states that the potential impacts on the justice system of the proposal for a new curriculum have been considered.

- a) Was a full justice impact assessment undertaken ahead of the introduction of the Bill?
- b) Paragraph 9.46 of the EM states that a Justice Impact Identification (JSII) form is available and a link to the form will be provided on introduction. It does not appear that the JSII form is published on the Welsh Government website, and we do not believe it has been made available to Senedd Committees. When will the JSII form be made available to Senedd Members?

Yours sincerely



Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English

