

SL(6)233 – The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022

Background and Purpose

The Curriculum and Assessment (Wales) Act 2021 (Consequential Amendments) (Secondary Legislation) (No. 3) Regulations 2022 (“these Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred on them by sections 74(1) and 75(1)(b) of the Curriculum and Assessment (Wales) Act 2021 (“the 2021 Act”).

The 2021 Act 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 arranged by local authorities.

It also makes limited provision for post compulsory education at maintained schools (Part 5 of the 2021 Act).

These 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 1 September 2022.

The new CfW will be rolled out for children and pupils in a phased manner. The new CfW will become mandatory for the year groups in schools and other settings as follows:

<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.

These Regulations predominantly make amendments to subordinate legislation made under the Education Act 1996.

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.

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.

These Regulations also make a minor amendment to the Curriculum and Assessment (Wales) Act 2021 (Transitional and Saving Provision) Regulations 2022.

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”.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.



Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 19(2)(a), there is a reference to regulation 2(a)(iii) in the National Curriculum (Miscellaneous Amendments) (Wales) Regulations 2016 which is to be omitted. However, there does not appear to be a sub-paragraph (iii) in regulation 2(a) of those Regulations, and it would appear the correct reference should be to regulation 2(a)(ii).

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 10(7)(a)(ii) inserts a new definition of “key stage” into regulation 3 of The Education (Information About Individual Pupils) (Wales) Regulations 2007 from 1 September 2024. The substituted definition refers to section 103(1) of the Education Act 2002, however section 103 has been repealed by para. 45 of Schedule 2 to the Curriculum and Assessment (Wales) Act 2021 as of 30 April 2021.

3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In reviewing these Regulations and the amendments they seek to implement, the Committee notes that in several instances there are inconsistencies with equivalence between the English and Welsh text and, in addition, some of these also include a failure to adhere to the drafting guidelines as set out in *Writing Laws for Wales* (“WLW”). Examples in these Regulations include:

- a. In regulation 7(5)(b)(i)(bb), the form of words used for the amendment does not follow the convention in WLW 7.3(2). Furthermore, the Welsh text does not have any corresponding words for “in its place” when identifying where the new words are to be inserted. As such, it does not follow that the new text will be inserted in exactly the same place as existing text which has been omitted, unlike an amendment that’s described as a substitution. In addition, the amendment in 7(5)(b)(i)(cc) takes a different approach to that in regulation 7(5)(b)(i) (bb) immediately before it.
- b. In regulation 8, in the Welsh text, the translation of the title is incorrect in the body of the regulation as the word that corresponds to “Education” is missing.
- c. In regulation 10(2), in the Welsh text, the words that correspond to “In regulation 3,” that describe the location of where the new definitions should be inserted, are missing from the translation.



- d. In regulation 11(2), in the Welsh text, the new definition of “lleoliad” (“setting”) is divided into paragraphs (a) to (d). However, the 2009 Regulations were made when the Welsh alphabet was used for the subdivisions of the translations. Therefore, the new definition of “lleoliad”, which will be inserted in those Regulations, should have a final paragraph that is numbered “(ch)” rather than “(d)” to be consistent with the numbering style of the original instrument (see WLW 7.18(2)). In addition, the conjunction after paragraph (c) should be changed from “a” to “ac” as a consequence of that change.
- e. In regulation 11(2), in the Welsh text, there’s a conjunction “ac” after the penultimate definition in the list of definitions to be inserted in regulation 2 of the 2009 Regulations. However, there’s no conjunction “and” after the penultimate definition in the English text.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

In regulation 11(4), the term “the 2009 Regulations” has been used. However, this term has not been previously defined in regulation 11(1) of these Regulations (unlike elsewhere when adopting this approach, for example regulations 7(1) and (6), and 10(1) and (9)). It also has not been defined in regulation 2(1) of these Regulations or, by virtue of regulation 2(2), the 2021 Act.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

In reviewing these Regulations and the amendments they seek to implement, the Committee notes that in several instances the Welsh Government does not appear to have adhered to its own drafting guidelines, as set out in WLW. The Committee encourages the Welsh Government to adhere to its own standards when drafting legislation. Significant examples of these Regulations include:

- a. In regulation 2(1), “maintained school” is defined for the purposes of these Regulations. However, the term is also defined and given a different meaning in regulations 7(6), 10(9), 14(5) and 15(4) for those particular regulations. It would be helpful if there is a signpost along with the definition in regulation 2(1) to alert the reader and possibly explaining where the definition does or does not apply (see WLW 4.8(5)).
- b. In regulations 9(3), 12, 15(3)(c) and (d), there are instructions to “revoke” specific provisions found within relevant regulations, but elsewhere the term “omit” has been



used. This includes in regulation 15(3)(a) and (c) where a mixture of both “omit” and “revoke” are used as instructions when revoking provisions found within the same regulation. As such the effect could be confusing to the reader, and the drafting guidance of the Welsh Government is quite clear that “revoke” should only be used when revoking the whole of the regulation (such as in regulations 4 and 8) but “omit” should be used when revoking specific provisions within the regulation, but not the whole instrument (see WLW 7.4(1) and (3)).

- c. In regulation 6(2), the amendment is described as being inserted “In regulation 2”. However, regulation 2 of the 2002 Regulations is subdivided into paragraphs about interpretation. Therefore, the description of the amendment isn’t sufficiently precise in describing where the new definition should be inserted in regulation 2 (see WLW 7.7(1)). Later amendments of a similar kind in these Regulations, such as those found in regulation 7(2) and (5)(a), 14(2) and 20, have been more precise in their descriptions when amending a regulation 2 which has subdivisions, and have said “In regulation 2(1)...”.
- d. In regulation 7(2)(a), in both language texts, the definition of “Hwb” does not have the corresponding definition used in the other language in brackets afterwards. Other definitions found in regulation 2(1) of the 2002 Regulations where the same word is used as the definition in both languages, such as “grant” and “mentor”, have still included the corresponding definition in brackets to aid the reader (WLW 4.15(6)).
- e. There are other instances of departure from WLW throughout these Regulations including regulation 7(5)(b)(iii)(aa).

Welsh Government response

Technical Scrutiny point 1:

The Welsh Government notes the Committee report and agrees with its conclusion. The reference in regulation 19(2)(a) should be changed from regulation 2(a)(iii) to regulation 2(a)(ii) in both languages. The 2022 Regulations will be amended to address this at the next available opportunity.

Technical Scrutiny point 2:

The Welsh Government notes the Committee report but disagrees and believes the amendment is appropriate. Section 103(1) of the Education Act 2002 was repealed by paragraph 45 of Schedule 2 to the 2021 Act, but then saved by regulation 3 of SI 2022/111 in particular circumstances. This means that the section 103 repeal has not taken effect in this instance and the substitution made by these 2022 Regulations is therefore required to bring the Education (Information About Individual Pupils) (Wales) Regulations 2007 in line with other amendments reflecting the roll out of the new curriculum.



Technical Scrutiny point 3a:

- The Welsh Government notes the Committee report on the form of words but does not propose to make an amendment. The provision and legislative context support a different approach to the Guidance and the form of words work in law.
- The Welsh Government notes the Committee report on the Welsh language syntax but does not agree. The words “ar ôl “cyrhaeddiad” yn y lle cyntaf y mae’n digwydd” make it clear that the text is to be removed and new text inserted in its place after “cyrhaeddiad”.
- The Welsh Government notes the Committee report on the approach in making amendments, and is of the view that the legislative context and sentence structure supported this approach.

Technical Scrutiny point 3b:

The Welsh Government notes the Committee report and agrees that the missing word should be included in the Welsh name of the SI. The 2022 Regulations will be amended to address this at the next available opportunity.

Technical Scrutiny point 3c:

The Welsh Government notes the Committee report and agrees that the text “yn rheoliad 3” should be included in the Welsh text of regulation 10(2) at the beginning of that provision. The 2022 Regulations will be amended to reflect this at the next available opportunity.

Technical Scrutiny point 3d:

The Welsh Government notes the Committee report and agrees that the Welsh alphabet should be used in the amendment to the subdivisions of the new definition of “lleoliad”, although there is no risk of misinterpretation of the law in this case. The 2022 Regulations will be amended to reflect this at the next available opportunity.

Technical Scrutiny point 3e:

The Welsh Government notes the Committee report and agrees to amend the 2022 Regulations to add a conjunction to regulation 11(2) in the English text at the next available opportunity.

Merit Scrutiny point 4:

The Welsh Government notes the Committee report and agrees with it. The 2022 Regulations will be amended at the next available opportunity so that regulation 11(1) includes the words (“Rheoliadau 2009”) and (“the 2009 Regulations”) after the footnote reference to the title of the Regulations in both the Welsh and English texts.

Merit scrutiny point 5a:



The Welsh Government notes the Committee report on the definition of “maintained school” but does not propose to amend as it believes the definitions provided are clear. The Welsh Government will consider the drafting suggestion in future.

Merit scrutiny point 5b:

The Welsh Government notes the point but does not propose to amend as the effect is clear in law.

Merit scrutiny point 5c:

The Welsh Government notes the Committee report and agrees that the reference in regulation 6(2) should be to regulation 2(1) and not regulation 2. The 2022 Regulations will be amended to reflect this at the next available opportunity.

Merit scrutiny point 5d:

The Welsh Government notes the Committee report but does not propose to amend to include italicised definitions of the same word as “Hwb” is a proper noun (an online system) which does not have a name in a different language and there is no potential for misunderstanding.

Merit scrutiny point 5e:

The Welsh Government notes the Committee report but does not propose amendments to the example listed as the drafting style is appropriate to the legislative context and the provision is clear and works in law.

Legal Advisers

Legislation, Justice and Constitution Committee

11 August 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee