

# A look at the draft Curriculum and Assessment (Wales) Bill: Problems and pitfalls.

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1. Hot on the heels of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, comes the draft Curriculum and Assessment (Wales) Bill (“the Bill”) which was introduced to the Senedd on 6 July 2020 without prior public consultation.
2. This article outlines the background to the Bill, summarises the key legislative provisions contained therein and considers the potential effects of the same focusing on the ‘big five’ foreseeable problems. It concludes that, whilst in principle the idea behind the Bill is positive, if implemented in its current form, the Bill is likely to cause more harm than good.

## The background

3. The Bill builds upon the White Paper ‘Our National Mission: A Transformational Curriculum – Proposals for a new legislative framework’ published by the Minister for Education in January 2019.
4. The Welsh Government’s Explanatory Memorandum to the Bill provides an outline of the rationale behind the Bill:
  - a. The current curriculum arrangements in place in Wales are “*based upon a model developed more than 30 years ago and is no longer fit for purpose*” (para 3.2 of the Explanatory Memorandum);
  - b. The “*high degree of prescription in the current curriculum has tended to create a culture where creativity has been diminished. There has been a narrowing of teaching and learning, with the professional contribution of the workforce underdeveloped*” (para 3.3 of the Explanatory Memorandum);

- c. There is a need to move away *“from a narrow, inflexible and crowded curriculum”* (para 3.4 of the Explanatory Memorandum).
5. Effectively then, the draft Bill is designed to pave the way for a new modern curriculum and assessment process in Wales that is able to prepare the youth of today for the modern workforce, whilst also concentrating on the needs of individual learners, rather than administering a ‘one size fits all’ curriculum.

## The key legislative provisions

### The makeup of the new curriculum

6. With the above background in mind, let us turn to consider the key provisions within the Bill which, for the avoidance of doubt, applies to a curriculum taught to children of compulsory school:
- a. Attending maintained schools;
  - b. Attending maintained nursery schools;
  - c. For whom funded non maintained nursery education is provided; and
  - d. For whom education is provided at a Pupil Referral Unit.
7. The key changes proposed under the Bill can be found at sections 10 – 12 which provide that:
- a. The headteacher of a school must design a curriculum for the school’s pupils (the National Curriculum no longer being used);
  - b. The curriculum designed by the headteacher must then be adopted by the governing body of the school and a summary of the curriculum published;
  - c. The headteacher and governing body must keep the curriculum under review.
8. The Bill outlines the *“four purposes”* underpinning the designing of a curriculum, deemed as being:
- “to enable pupils and children to develop as:*
- *Ambitious, capable learners, ready to learn throughout their lives*
  - *Enterprising, creative contributors, ready to play a full part in life and work*
  - *Ethical, informed citizens of Wales and the world*
  - *Healthy, confident individuals, ready to live fulfilling lives as valued members of society”*

9. The curriculum itself must be comprised of the following areas of “*learning and experience*”:
  - a. Expressive arts;
  - b. Health and wellbeing;
  - c. Humanities;
  - d. Language, literacy and communication;
  - e. Mathematics and numeracy;
  - f. Science and technology.
10. Within the areas of learning and experience there are four mandatory elements that must be contained: (i) English, (ii) Relationships and sexual education, (iii) Religion, values and ethics and (iv) Welsh, plus an additional three “*cross curricular skills*” of digital competence, literacy and numeracy. It is not explained how these are to be incorporated into the areas of “learning and experience”.
11. The Welsh Ministers will issue three codes which must be kept under review and revised (presumably as appropriate – the Bill is silent on this point):
  - a. The “*What Matters Code*” – this will set out the key concepts for each area of learning and experience that must be included within any curriculum;
  - b. The “*Progression Code*” - this will set out the way in which a curriculum is to make provision for progression by pupils and children;
  - c. The “*RSE Code*” – this will set out the themes and matters to be encompassed by the mandatory element of Relationships and Sexuality Education.
12. The curriculum developed must also:
  - a. Provide for “*appropriate progression*”;
  - b. Be “*suitable for pupils, or children, of differing ages, abilities and aptitudes*”;
  - c. Be “*broad and balanced*”;
  - d. Where the majority of pupils in a class have attained the age of 14, those pupils must be offered “*a choice of teaching and learning within each area of learning and experience*”.
13. For pupils attending non maintained nurseries, the Welsh Ministers will publish a curriculum that they consider suitable for such institutions. Non maintained nurseries

can then either adopt the Welsh Minister's curriculum or its own alternative curriculum that complies with the aforementioned criteria. No such curriculum will be provided for other school designations.

14. The headteachers of Schools which wish to develop or maintain its pupils levels of fluency in Welsh may make a revocable "*determination*" under section 26 to remove English as a mandatory element from the curriculum. In effect, this is designed to ensure that Welsh medium schools do not accidentally breach the new curriculum requirements within which English is mandatory.

### **Implementing the new curriculum**

15. The curriculum must be broadly implemented in line with the principles outlined above at [paragraphs 9 - 12](#).
16. Notwithstanding that pupils over the age of 14 are supposed to receive an element of choice in their curriculum, the headteacher of a school may disapply the requirement to provide a choice to individual pupils if:
  - a. the teaching and learning is not suitable for the pupil, due to the pupil's level of educational attainment;
  - b. it is not reasonably practicable to secure the teaching and learning for the pupil, due to other choices made by the pupil;
  - c. the amount of time likely to be spent travelling to the place at which the teaching is likely to be delivered would be detrimental to the pupil's education;
  - d. disproportionate expenditure would be incurred if the teaching and learning were to be secured for the pupil;
  - e. the pupil or another person's health or safety would be placed unacceptably at risk if the teaching and learning were to be secured for the pupil.
17. Where a headteacher makes such a determination, the parent of the relevant pupil may require the headteacher to review the determination and, if dissatisfied with the review, appeal to the governing body of the school.
18. Where pupils hold an Individual Development Plan or Education, Health and Care Plan the aforementioned requirements may be dis-applied to them accordingly in line with the contents of their respective document.

### What about students in post compulsory education

19. Limited guidance is provided in the Bill to those beyond compulsory school age that remain in education.
20. What is stated is that a curriculum will need to be drawn up, however, the only statutory requirements for the same are that it is:  
  
*“ a balanced and broadly based curriculum that...promotes the spiritual, moral, cultural, mental and physical development of the pupils and of society [and which] prepares the pupils for the opportunities, responsibilities and experiences of later life”*
21. Additionally, where requested, headteachers must ensure that teaching and learning in religion, values and ethics is provided.

### Assessment and Progression

22. Unhelpfully, the Bill is silent on how the new curriculum is to be assessed, simply requiring Regulations to be published dealing with the same.

### Secondary legislation

23. If the Explanatory Memorandum is to be believed there is a possibility of a further 16 pieces of secondary legislation to be published, alongside three codes prepared by the Welsh Ministers. In practise this will unlikely be the case, as various areas requiring regulations to be made could be grouped together.

### An analysis

24. There are, in my view, a number of potential problems with the Bill. Below, I outline five key issues that require resolution before the Bill becomes law.
25. Firstly, as will be apparent from the above, the Bill is vague to the point of confusion as to what exactly should be contained within a curriculum. The “four purposes” are vague (more on this below), the areas of “learning and experience” overly broad, the mandatory elements lacking in breadth and the “Codes” as of yet, non existent. The Bill fails to give anyone not privy to the Welsh Government’s intentions, any idea of what or how our children are going to be taught under the new curriculum. This appears to be largely down to the Bill requiring the publication of three Codes containing the minimum requirements for any curriculum and, one hopes, explaining the vague language used within the Bill. That said, it is unclear why Codes are required and why the basic

contents of a curriculum could not have found its way into a schedule to the Bill. At the very least this would offer some level of certainty on the subject matter. Moreover, why is the Welsh Government only publishing a precedent curriculum for non-maintained nurseries rather than for the entire sector? Leaving the Bill as vague as it is without publishing some kind of precedent simply causes unnecessary distress to educators (and those advising them) as to what they should be preparing for when the Bill becomes law.

26. Secondly, the result of the Bill should it remain unchanged, is that each school will prepare and maintain its own individual curriculum. This is likely to cause inequality across the Welsh state education sector, with those schools able to attract the top talent (or hire consultants) with experience of curriculum design preparing the best curriculums and attracting the most students. Almost inevitably those schools able to access the best headteachers will be those with the biggest budgets in the most affluent areas. Consequently, this will cause a rise in the number of admissions appeals taking up local authorities' time with parents of incoming pupils 'curriculum shopping' in order to get their child into the school with the, perceived, best curriculum. It may also lead to a wide disparity in attainment across the country.
27. Thirdly, the Bill is silent on how compliance with the various elements required under the Bill will be scrutinised and what the penalties are for non compliance. With all state schools following the National Curriculum, even if there is a disparity in the quality of teaching, parents know that all children are broadly learning the same content. In the new area of school led curriculums based upon vague statements of what should be included, this will no longer be the case. A method for robust checks and balances must be put in place that balance the need to ensure general compliance with the provisions of the Bill whilst also ensuring that pupils are not prejudiced, should enforcement action need to be taken, or amendments made to the curriculum.
28. Fourthly, where are the additional resources coming from in reflection of the increased burden upon head teachers and senior leadership teams? Not only are they likely to already be under pressure from the very foreseeable shortcomings in the new additional learning needs system implemented just one year prior in 2021, they are now going to be required to take (presumably a significant amount of time) to draw up a new curriculum from scratch. Arguably this is not within the role of a headteacher generally and, in any event, almost certainly is not something that is going to be done within the reasonable working hours of a headteacher. One hopes that school budgets will be adjusted accordingly.

29. Lastly, the “four purposes” that are designed to underpin the entire project, are vague, and immeasurable. How can one objectively identify if a learner has, as a direct result of their new curriculum, become ready to learn throughout their life? Or whether they are ready to live a fulfilling life as a valued member of society? Whilst I do not suggest that academic ability should be the method by which we judge our children, nor indeed do I suggest that doing so is not fraught with its own problems, at the very least focusing on measurable academic attainment is objectively measurable and focuses the mind of institutions towards achieving a measurable goal that is useful to future employers and against which schools can be held to account.

## Conclusion

30. Whilst the background and the rationale to the Bill are admirable, the way in which the Bill is drafted and the lack of consideration given to how its provisions will work in practise are worrying. Should the forthcoming regulations and codes remedy these difficulties then there is hope for the future. If not, then it is entirely unclear how future generations are to be taught.

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