



# Curriculum and Assessment (Wales) Act 2021

2021 asc 4

VALID FROM 14/06/2022

## PART 2

CURRICULUM IN MAINTAINED SCHOOLS, MAINTAINED NURSERY  
SCHOOLS AND FUNDED NON-MAINTAINED NURSERY EDUCATION

VALID FROM 01/09/2022

## CHAPTER 1

CURRICULUM DESIGN AND ADOPTION

*General*

### 9 Introduction and interpretation

- (1) This Chapter makes provision about the design and adoption of a curriculum for any of the following—
  - (a) registered pupils at a maintained school, except those over compulsory school age;
  - (b) registered pupils at a maintained nursery school;
  - (c) children for whom funded non-maintained nursery education is provided.
- (2) References in this Chapter to a school are to—
  - (a) a maintained school, or
  - (b) a maintained nursery school.

*Status: Point in time view as at 29/09/2021. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the  
 Curriculum and Assessment (Wales) Act 2021, PART 2. (See end of Document for details)*

(3) In this Chapter—

- (a) references to pupils, in relation to a school, are to registered pupils at the school, except those over compulsory school age;
- (b) references to children, in relation to funded non-maintained nursery education, are to children for whom that education is provided;
- (c) references to the adopted curriculum, in relation to a school, are to the curriculum adopted under section 11 by the head teacher and governing body of the school (and if that curriculum is revised under section 12, to the curriculum as revised);
- (d) references to the adopted curriculum, in relation to funded non-maintained nursery education, are to the curriculum adopted under section 15 by the provider of the education (and if that curriculum is revised under section 16, to the curriculum as revised).

*Maintained schools and maintained nursery schools*

**10 Curriculum design**

- (1) The head teacher of a school must design a curriculum for the school's pupils.
- (2) That curriculum must comply with the requirements in sections 20 to 24, and any requirement imposed under section 25.

**11 Curriculum adoption**

- (1) The head teacher and governing body of a school must—
  - (a) adopt the curriculum designed under section 10 as the curriculum for the school's pupils, and
  - (b) publish a summary of the adopted curriculum.
- (2) But a curriculum may not be adopted under this section unless it complies with the requirements in sections 20 to 24, and any requirement imposed under section 25.

**12 Curriculum review and revision**

- (1) The head teacher and governing body of a school must—
  - (a) keep the adopted curriculum under review, and
  - (b) ensure that it continues to comply with the requirements in sections 20 to 24, and any requirement imposed under section 25.
- (2) In considering whether the adopted curriculum continues to comply with the requirements referred to in subsection (1)(b), the head teacher and governing body must have regard to information derived from any assessment arrangements implemented by them under regulations made under section 56.
- (3) The head teacher and governing body of a school must revise the adopted curriculum if they consider it necessary to do so to ensure that it continues to comply with the requirements referred to in subsection (1)(b).
- (4) The head teacher and governing body of a school may also revise the adopted curriculum if they consider it appropriate to do so at any time.

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- (5) If the head teacher and governing body of a school revise the adopted curriculum, they must publish a summary of the revised curriculum.

*Funded non-maintained nursery education*

**13 Welsh Ministers' duty to publish a curriculum**

- (1) The Welsh Ministers must publish a curriculum (the “section 13 curriculum”) that they consider suitable for children for whom funded non-maintained nursery education is provided.
- (2) The section 13 curriculum must comply with the requirements in sections 20 to 24, and any requirement imposed under section 25.

**14 Review and revision of curriculum published by Welsh Ministers**

- (1) The Welsh Ministers must—
- keep the section 13 curriculum under review, and
  - ensure that it continues to comply with sections 20 to 24, and any requirement imposed under section 25.
- (2) The Welsh Ministers must revise the section 13 curriculum if they consider it necessary to do so to ensure that it continues to comply with the requirements referred to in subsection (1)(b).
- (3) The Welsh Ministers may also revise the section 13 curriculum if they consider it appropriate to do so at any time.
- (4) If the Welsh Ministers revise the section 13 curriculum, they must publish the revised curriculum.

**15 Curriculum adoption**

- (1) A provider of funded non-maintained nursery education must—
- adopt a curriculum for children for whom that education is provided (whether the section 13 curriculum or another curriculum the provider considers suitable), and
  - publish a summary of the adopted curriculum.
- (2) But a curriculum may not be adopted under this section unless it complies with the requirements in sections 20 to 24, and any requirement imposed under section 25.

**16 Curriculum review and revision**

- (1) A provider of funded non-maintained nursery education must—
- keep the adopted curriculum under review, and
  - ensure that it continues to comply with sections 20 to 24, and any requirement imposed under section 25.
- (2) In considering whether the adopted curriculum continues to comply with the requirements referred to in subsection (1)(b), the provider must have regard

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to information derived from any assessment arrangements implemented by the provider under regulations made under section 56.

- (3) The provider must revise the adopted curriculum if the provider considers it necessary to do so to ensure that it continues to comply with the requirements referred to in subsection (1)(b).
- (4) The provider may also revise the adopted curriculum if the provider considers it appropriate to do so at any time.
- (5) If the provider has adopted the section 13 curriculum, and the Welsh Ministers revise that curriculum under section 14, the provider must consider whether it is appropriate to revise the adopted curriculum under subsection (4) so as to reflect the revisions made under section 14.
- (6) If the provider revises the adopted curriculum, the provider must publish a summary of the revised curriculum.

*Supplementary provision*

**17 Power to make supplementary provision about curriculum adoption and revision**

Regulations may make provision about—

- (a) steps to be taken before a curriculum is adopted under this Part (including provision about steps to be taken in order to determine whether a proposed curriculum is suitable for adoption);
- (b) the date by which a curriculum must be adopted under this Part;
- (c) additional circumstances in which an adopted curriculum must be revised.

**18 Power to make supplementary provision about curriculum summaries**

Regulations may make provision—

- (a) about information that is to be included in a summary of an adopted curriculum published under this Part;
- (b) about the publication of a summary of an adopted curriculum (including provision about how publication must take place, and the date by which it must take place).

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VALID FROM 01/09/2022

## CHAPTER 2

### CURRICULUM REQUIREMENTS

#### *General*

#### **19 Introduction**

- (1) This Chapter sets out curriculum requirements.
- (2) References in this Chapter to a curriculum are to a curriculum for any of the following—
  - (a) registered pupils at a maintained school, except those over school age;
  - (b) registered pupils at a maintained nursery school;
  - (c) children for whom funded non-maintained nursery education is provided.
- (3) In this Chapter—
  - (a) references to pupils are to registered pupils at a maintained school or maintained nursery school, except those over compulsory school age;
  - (b) references to children, in relation to funded non-maintained nursery education, are to children for whom that education is provided.

#### *Curriculum requirements*

#### **20 The four purposes**

The curriculum must enable pupils, or children, to develop in the ways described in the four purposes.

#### **21 Progression**

The curriculum must provide for appropriate progression.

#### **22 Suitability**

The curriculum must be suitable for pupils, or children, of differing ages, abilities and aptitudes.

#### **23 Breadth and balance**

The curriculum must be broad and balanced.

#### **24 Areas of learning and experience and cross-curricular skills**

- (1) The curriculum must make provision for teaching and learning that—

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- (a) encompasses each of the areas of learning and experience, including the mandatory elements within the areas of learning and experience, and
  - (b) develops the mandatory cross-curricular skills.
- (2) The provision for teaching and learning encompassing the mandatory element of Relationships and Sexuality Education must be developmentally appropriate for pupils, or children.
- (3) The provision for teaching and learning encompassing the mandatory element of Religion, Values and Ethics must accord with Part 1 of Schedule 1, except where subsection (4) applies.
- (4) This subsection applies where the provision for teaching and learning is made—
- (a) for pupils in a class in which the majority of the pupils are below compulsory school age at the beginning of the school year;
  - (b) for children for whom funded non-maintained nursery education is provided.
- (5) If the curriculum applies to pupils who have completed the school year in which the majority of the pupils in their class attained the age of 14, it must offer those pupils a choice of teaching and learning within each area of learning and experience.

## **25 Power to impose further curriculum requirements**

- (1) Regulations may specify further requirements with which a curriculum for a maintained school must comply so far as it applies to pupils within subsection (2).
- (2) The pupils are those who have completed the school year in which the majority of the pupils in their class attained the age of 14, but are still of compulsory school age.
- (3) The regulations may, among other things, specify provision—
- (a) that must be made in a curriculum;
  - (b) that must not be made in a curriculum.
- (4) The regulations may make provision by reference to courses of study (for example, so as to require a curriculum to make provision for a minimum number of courses of study, or for courses of study specified in the regulations).
- (5) In this section, “course of study” means a course of education or training that—
- (a) leads to a form of qualification or set of forms of qualification approved under Part 4 of the Qualifications Wales Act 2015 (anaw 5) or designated under Part 5 of that Act, or
  - (b) is designated by the Welsh Ministers under section 34(8) of that Act.

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VALID FROM 01/09/2022

## CHAPTER 3

### CURRICULUM IMPLEMENTATION

#### *General*

#### **26 Introduction and interpretation**

- (1) This Chapter makes provision about the implementation of a curriculum for any of the following—
  - (a) registered pupils at a maintained school, except those over compulsory school age;
  - (b) registered pupils at a maintained nursery school;
  - (c) children for whom funded non-maintained nursery education is provided.
- (2) Chapter 4 sets out exceptions to the curriculum implementation duties in this Chapter.
- (3) References in this Chapter and in Chapter 4 to a school are to—
  - (a) a maintained school, or
  - (b) a maintained nursery school.
- (4) In this Chapter and in Chapter 4—
  - (a) references to pupils, in relation to a school, are to registered pupils at the school, except those over compulsory school age;
  - (b) references to children, in relation to funded non-maintained nursery education, are to children for whom that education is provided;
  - (c) references to the adopted curriculum, in relation to a school, are to the curriculum adopted under section 11 by the head teacher and governing body of the school (and if that curriculum is revised under section 12, to the curriculum as revised);
  - (d) references to the adopted curriculum, in relation to funded non-maintained nursery education, are to the curriculum adopted under section 15 by the provider of the education (and if that curriculum is revised under section 16, to the curriculum as revised).

#### *Maintained schools and maintained nursery schools*

#### **27 Duty to ensure implementation of adopted curriculum**

- (1) The head teacher of a school must ensure that the adopted curriculum is implemented for the school's pupils in accordance with sections 28, 29 and 30.
- (2) The governing body of a school must exercise its functions with a view to ensuring that the adopted curriculum is implemented for the school's pupils in accordance with sections 28, 29 and 30.

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## **28 General implementation requirements**

The adopted curriculum must be implemented in a way that—

- (a) enables each pupil to develop in the ways described in the four purposes,
- (b) secures teaching and learning that offers appropriate progression for each pupil,
- (c) is suitable for each pupil's age, ability and aptitude,
- (d) takes account of each pupil's additional learning needs (if any), and
- (e) secures broad and balanced teaching and learning for each pupil.

## **29 Further implementation requirements for pupils aged 3 to 14**

- (1) The adopted curriculum must be implemented in accordance with subsection (2) for pupils who have not yet completed the school year in which the majority of the pupils in their class attain the age of 14.
- (2) The adopted curriculum must be implemented in a way that secures teaching and learning for each pupil that—
  - (a) encompasses the areas of learning and experience (including the mandatory elements within those areas), and
  - (b) develops the mandatory cross-curricular skills.
- (3) The teaching and learning secured under subsection (2)—
  - (a) in respect of the mandatory element of Relationships and Sexuality Education, must be suitable for the pupil's stage of development, and
  - (b) in respect of the mandatory element of Religion, Values and Ethics, must accord with Part 2 of Schedule 1, except where subsection (4) applies.
- (4) This subsection applies where the teaching and learning is for pupils in a class in which the majority of the pupils are below compulsory school age at the beginning of the school year.

PROSPECTIVE

## **30 Further implementation requirements for pupils aged 14 to 16**

- (1) The adopted curriculum must be implemented in accordance with subsection (2) for pupils who have completed the school year in which the majority of the pupils in their class attained the age of 14.
- (2) The adopted curriculum must be implemented in a way that—
  - (a) secures teaching and learning for each pupil that encompasses the mandatory elements within the areas of learning and experience, and
  - (b) secures other teaching and learning for each pupil in each area of learning and experience.
- (3) The teaching and learning secured under subsection (2) must develop the mandatory cross-curricular skills.
- (4) The teaching and learning secured under subsection (2) must include—



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- (a) teaching and learning in respect of any provision made in the curriculum, so far as it applies to the pupil, by virtue of regulations made under section 25, and
  - (b) the teaching and learning chosen by the pupil by virtue of section 24.
- (5) For an exception to the duty to secure the teaching and learning chosen by the pupil, see section 31.
- (6) The teaching and learning secured under subsection (2)—
- (a) in respect of the mandatory element of Relationships and Sexuality Education, must be suitable for the pupil's stage of development, and
  - (b) in respect of the mandatory element of Religion, Values and Ethics, must accord with Part 2 of Schedule 1.

PROSPECTIVE

### **31 Power to disapply duty to implement pupil choice**

- (1) This section applies to the teaching and learning chosen by a pupil by virtue of section 24.
- (2) If the head teacher of a maintained school is satisfied that a relevant ground applies, the head teacher may determine that the duty to secure the teaching and learning does not apply.
- (3) In the case of a determination made before the pupil begins the relevant school year, the relevant grounds are that—
- (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 by virtue of section 24;
  - (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.
- (4) In the case of a determination made after the pupil has begun the relevant school year, the relevant grounds are that—
- (a) disproportionate expenditure would be incurred if the teaching and learning were to continue to be secured for the pupil;
  - (b) the pupil's or another person's health or safety would be placed unacceptably at risk if the teaching and learning were to continue to be secured for the pupil.
- (5) In subsections (3) and (4), the “relevant school year” is the school year in which the majority of the pupils in the pupil's class will attain the age of 15.
- (6) Regulations may amend subsections (3) and (4).

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PROSPECTIVE

**32 Power to disapply duty to implement pupil choice: supplementary**

- (1) A head teacher who makes a determination under section 31 must give the information described in subsection (2) to—
  - (a) the pupil to whom the determination relates, and
  - (b) the pupil's parent.
- (2) The information is—
  - (a) the fact that the determination has been made,
  - (b) the effect of the determination,
  - (c) the head teacher's reasons for making the determination,
  - (d) information about the teaching and learning that will be secured for the pupil in place of the teaching and learning in respect of which the determination has been made, and
  - (e) information about the right to request a review, or make an appeal, under section 33.
- (3) The information must be given in writing.
- (4) The duty in subsection (1)(a) does not apply if the head teacher considers that the pupil in question does not have the capacity to understand—
  - (a) the information that would be given, or
  - (b) what it means to exercise the rights conferred by section 33.
- (5) Regulations may make further provision in connection with determinations under section 31.

PROSPECTIVE

**33 Reviews and appeals relating to pupil choice**

- (1) A pupil or parent who is given information about a determination made by a head teacher under section 31—
  - (a) may require the head teacher to review the determination, and
  - (b) if dissatisfied with the head teacher's decision on the review, may appeal to the governing body of the school against that decision.
- (2) On a review, the head teacher—
  - (a) may confirm, vary or revoke the determination, and
  - (b) must give written notice of that decision to—
    - (i) the pupil,
    - (ii) the pupil's parent, and
    - (iii) the governing body.
- (3) But subsection (2)(b)(i) does not apply if the head teacher considers that the pupil does not have the capacity to understand—
  - (a) the information that would be given, or

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- (b) what it means to exercise the right conferred by subsection (1)(b).
- (4) On an appeal, the governing body—
  - (a) may confirm the head teacher's decision on the review or direct the head teacher to take the action that it considers appropriate, and
  - (b) must give written notice of its decision to—
    - (i) the pupil,
    - (ii) the pupil's parent, and
    - (iii) the head teacher.
- (5) But subsection (4)(b)(i) does not apply if the governing body considers that the pupil does not have the capacity to understand the information that would be given.
- (6) The head teacher must comply with a direction given under subsection (4)(a).
- (7) The head teacher and governing body of a school within subsection (8) must publish information setting out a procedure for reviews and appeals under this section.
- (8) A school is within this subsection if the adopted curriculum applies to pupils who have completed the school year in which the majority of the pupils in their class attained the age of 14.

#### *Funded non-maintained nursery education*

### **34 Duty to ensure implementation of adopted curriculum**

- (1) A provider of funded non-maintained nursery education must ensure that the adopted curriculum is implemented for children in accordance with sections 35 and 36.
- (2) A local authority that secures funded non-maintained nursery education must exercise its functions with a view to ensuring that the adopted curriculum is implemented in accordance with sections 35 and 36 for children for whom that education is provided.

### **35 General implementation requirements**

The adopted curriculum must be implemented in a way that—

- (a) enables each child to develop in the ways described in the four purposes,
- (b) secures teaching and learning that offers appropriate progression for each child,
- (c) is suitable for each child's age, ability and aptitude,
- (d) takes account of each child's additional learning needs (if any), and
- (e) secures broad and balanced teaching and learning for each child.

### **36 Requirements relating to areas of learning and experience and cross-curricular skills**

- (1) The adopted curriculum must be implemented in a way that secures teaching and learning for each child that—

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- (a) encompasses the areas of learning and experience (including the mandatory elements within those areas), and
  - (b) develops the mandatory cross-curricular skills.
- (2) Teaching and learning secured for a child under subsection (1) in respect of the mandatory element of Relationships and Sexuality Education must be suitable for the child's stage of development.

## CHAPTER 4

### CURRICULUM IMPLEMENTATION: EXCEPTIONS

VALID FROM 01/09/2022

#### **37 Introduction**

- (1) This Chapter sets out exceptions to the curriculum implementation duties in Chapter 3.
- (2) Section 26 explains the meaning of certain expressions used in this Chapter.

VALID FROM 01/09/2022

#### **38 Development work and experiments**

- (1) The Welsh Ministers may give a direction under this section in order to enable development work or experiments to be carried out.
- (2) A direction may be given in relation to—
  - (a) a school specified in the direction;
  - (b) schools of a description specified in the direction;
  - (c) funded non-maintained nursery education of a description specified in the direction.
- (3) A direction given in relation to a school must be given—
  - (a) to the head teacher and the governing body of the school, and
  - (b) to the local authority that maintains the school (unless the school is a foundation or voluntary aided school).
- (4) A direction given in relation to a school may, for a period specified in the direction—
  - (a) disapply sections 27, 28, 29 and 30, or any of those sections, in relation to the school;
  - (b) provide that sections 27, 28, 29 and 30, or any of those sections, apply in relation to the school with the modifications specified in the direction.
- (5) A direction given in relation to a school may also require—
  - (a) the head teacher and the governing body of the school, and

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- (b) the local authority that maintains the school (unless the school is a foundation or voluntary aided school),  
to report to the Welsh Ministers on any matters specified in the direction at times or intervals specified in the direction.
- (6) A direction given in relation to funded non-maintained nursery education must be given to—
- (a) the provider of the education, and
  - (b) the local authority that secures the education.
- (7) A direction given in relation to funded non-maintained nursery education may, for a period specified in the direction—
- (a) disapply sections 34, 35 and 36, or any of those sections, in relation to that education;
  - (b) provide that sections 34, 35 and 36, or any of those sections, apply in relation to that education with the modifications specified in the direction.
- (8) A direction given in relation to funded non-maintained nursery education may also require—
- (a) the provider of the education, and
  - (b) the local authority that secures the education,
- to report to the Welsh Ministers on any matters specified in the direction at times or intervals specified in the direction.
- (9) A person to whom a direction is given under this section must comply with the direction.

VALID FROM 01/09/2022

### **39 Development work and experiments: conditions**

- (1) The Welsh Ministers may give a direction under section 38 only if the conditions in this section are met.
- (2) The first condition is that the Welsh Ministers are satisfied that the curriculum that will be implemented for the pupils or children as a result of the direction will—
- (a) enable each pupil or child to develop in the ways described in the four purposes,
  - (b) secure teaching and learning that offers appropriate progression for each pupil or child,
  - (c) be suitable for each pupil or child's age, ability and aptitude,
  - (d) take account of each pupil's or child's additional learning needs (if any), and
  - (e) secure broad and balanced teaching and learning for each pupil or child.
- (3) The second condition, in the case of a direction relating to a community school, voluntary controlled school, community special school or maintained nursery school, is that the direction is given—
- (a) on an application made by the governing body with the local authority's agreement,

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- (b) on an application made by the local authority with the governing body's agreement, or
  - (c) on a proposal made by the Welsh Ministers with the agreement of the governing body and the local authority.
- (4) The second condition, in the case of a direction relating to a foundation school or voluntary aided school, is that the direction is given—
- (a) on an application made by the governing body, or
  - (b) with the governing body's agreement.
- (5) The second condition, in the case of a direction relating to funded non-maintained nursery education, is that the direction is given—
- (a) on an application made by the local authority with the agreement of the provider of the education, or
  - (b) on a proposal made by the Welsh Ministers with the agreement of the local authority and the provider of the education.
- (6) In this section—
- (a) references to the local authority, in relation to a school, are to the local authority that maintains the school;
  - (b) references to the local authority, in relation to funded non-maintained nursery education, are to the local authority that secures the education.

VALID FROM 01/09/2022

#### **40 Development work and experiments: supplementary**

- (1) This section applies in relation to a direction given under section 38.
- (2) The direction must be given in writing.
- (3) The Welsh Ministers must publish the direction.
- (4) Where the direction relates to a school—
  - (a) the head teacher and governing body of the school must publish a summary of the curriculum that will be implemented as a result of the direction, and
  - (b) section 12 applies in relation to the school only to the extent that the exercise of functions under that section is compatible with the direction.
- (5) Where the direction relates to funded non-maintained nursery education—
  - (a) the provider of the education must publish a summary of the curriculum that will be implemented as a result of the direction, and
  - (b) section 16 applies in relation to the education only to the extent that the exercise of functions under that section is compatible with the direction.

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VALID FROM 01/09/2022

#### **41 Pupils and children with additional learning needs**

- (1) The additional learning provision described in an individual development plan prepared or maintained by a local authority under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2) may include provision—
  - (a) that disapplies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil;
  - (b) that applies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil with the modifications specified in the plan;
  - (c) that disapplies sections 34, 35 and 36, or any of those sections, in relation to a child;
  - (d) that applies sections 34, 35 and 36, or any of those sections, in relation to a child with the modifications specified in the plan.
- (2) The special educational provision specified in an EHC plan under section 37 of the Children and Families Act 2014 (c. 6) (education, health and care plans) may include provision—
  - (a) that disapplies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil;
  - (b) that applies sections 27, 28, 29 and 30, or any of those sections, in relation to a pupil with the modifications specified in the plan;
  - (c) that disapplies sections 34, 35 and 36, or any of those sections, in relation to a child;
  - (d) that applies sections 34, 35 and 36, or any of those sections, in relation to a child with the modifications specified in the plan.
- (3) But an individual development plan or EHC plan may include provision referred to in subsection (1) or (2) only if the local authority is satisfied that the curriculum that will be implemented for the child as a result of the disapplication or modification will—
  - (a) enable the pupil or child to develop in the ways described in the four purposes,
  - (b) secure teaching and learning that offers appropriate progression for the pupil or child,
  - (c) be suitable for the pupil or child's age, ability and aptitude, and
  - (d) secure broad and balanced teaching and learning for the pupil or child.
- (4) Regulations may specify further conditions that must be satisfied before an individual development plan or EHC plan may include provision referred to in subsection (1) or (2).
- (5) In this section, the reference to the local authority is to the local authority that prepares or maintains the individual development plan or that secures the preparation, amendment or replacement of the EHC plan.

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*Changes to legislation: There are currently no known outstanding effects for the  
 Curriculum and Assessment (Wales) Act 2021, PART 2. (See end of Document for details)*

#### **42 Temporary exceptions for individual pupils and children**

- (1) Regulations may enable the head teacher of a maintained school or maintained nursery school to determine, in cases or circumstances specified in the regulations—
  - (a) that sections 27, 28, 29 and 30, or any of those sections, are to be disapplied in relation to a registered pupil at the school during the period specified in the determination, or
  - (b) that sections 27, 28, 29 and 30, or any of those sections, are to be applied in relation to a registered pupil at the school, during the period specified in the determination, with the modifications specified in the determination.
- (2) Regulations may enable a provider of funded non-maintained nursery education to determine, in cases or circumstances specified in the regulations—
  - (a) that sections 34, 35 and 36, or any of those sections, are to be disapplied, during the period specified in the determination, in relation to a child for whom the education is provided, or
  - (b) that sections 34, 35 and 36, or any of those sections, are to be applied in relation to such a child, during the period specified in the determination, with the modifications specified in the determination.
- (3) If regulations are made under this section, they must provide that a person may make a determination under the regulations only if satisfied that the curriculum that will be implemented for the pupil or child as a result of the determination will—
  - (a) enable the pupil or child to develop in the ways described in the four purposes,
  - (b) secure teaching and learning that offers appropriate progression for each pupil or child,
  - (c) be suitable for the pupil or child's age, ability and aptitude,
  - (d) take account of the pupil's or child's additional learning needs (if any), and
  - (e) secure broad and balanced teaching and learning for the pupil or child.
- (4) Regulations made under this section may specify further conditions that must be met before a determination may be made under the regulations.

#### **43 Temporary exceptions for individual pupils and children: supplementary**

- (1) This section makes further provision about regulations made under section 42.
- (2) The regulations must not allow a determination to be made under the regulations on the grounds that a pupil or child has, or may have, additional learning needs (see, instead, section 41).
- (3) The regulations must specify that that the operative period of a determination made under the regulations is either—
  - (a) a fixed period specified in the determination that does not exceed 6 months, or
  - (b) a period that must be brought to an end (in accordance with the regulations) no later than 6 months from its beginning.
- (4) But the regulations may specify a different operative period for a determination if that operative period is to begin—
  - (a) immediately after the end of the operative period of a previous determination, or



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- (b) before the end of a period, specified in the regulations, that begins with the end of the operative period of a previous determination.
- (5) The regulations may enable a person who makes a determination under the regulations—
  - (a) to vary the determination, except in relation to its operative period, or
  - (b) to revoke the determination.
- (6) The regulations may specify—
  - (a) cases or circumstances in which a determination made under the regulations may be varied or revoked;
  - (b) conditions which must be met before a determination made under the regulations may be varied or revoked.
- (7) In this section, the “operative period” of a determination means the period for which the determination has effect.

VALID FROM 01/09/2022

#### **44 Provision of information about temporary exceptions**

- (1) A head teacher who makes, varies or revokes a determination under regulations made under section 42 must give the information described in subsections (3) and (4), in writing, to—
  - (a) the pupil to whom the determination relates,
  - (b) the pupil's parent,
  - (c) the governing body of the school, and
  - (d) the local authority that maintains the school.
- (2) A provider of funded non-maintained nursery education who makes, varies or revokes a determination under regulations made under section 42 must give the information described in subsections (3) and (4), in writing, to—
  - (a) the parent of the child to whom the determination relates, and
  - (b) the local authority that secures the education.
- (3) The information is—
  - (a) the fact that the determination has been made, varied or revoked;
  - (b) the effect of the determination, variation or revocation;
  - (c) the reasons for making, varying or revoking the determination;
  - (d) information about—
    - (i) the right to make an appeal under section 45 (in the case of a determination that relates to a pupil);
    - (ii) the right to make an appeal under section 46 (in the case of a determination that relates to any other child).
- (4) Where a determination is made or varied, the information must also include—
  - (a) a description of the provision that will be made for the pupil or child's education during the period specified in the determination;

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- (b) a description of the way in which the head teacher or provider proposes to ensure that the adopted curriculum is implemented for the pupil or child at the end of that period.
- (5) The duty in subsection (1)(a) does not apply if the head teacher considers that the pupil does not have the capacity to understand—
- (a) the information that would be given, or
  - (b) what it means to exercise the right conferred by section 45.

VALID FROM 01/09/2022

#### **45 Appeals about temporary exceptions for individual pupils**

- (1) This section applies where—
- (a) the head teacher of a school makes, varies or revokes a determination relating to a pupil under regulations made under section 42, or
  - (b) a pupil, or a pupil's parent, asks the head teacher of a school to make a determination under those regulations in relation to the pupil, but no determination is made.
- (2) Each of the following may appeal to the governing body of the school—
- (a) the pupil;
  - (b) the pupil's parent.
- (3) Subsection (2)(a) does not apply if the governing body considers that the pupil in question does not have the capacity to understand what it means to exercise the right conferred by this section.
- (4) If an appeal is made under this section, the governing body may—
- (a) direct the head teacher, in writing, to take the action that it considers appropriate in respect of the determination referred to in subsection (1)(a) or the request referred to in subsection (1)(b), or
  - (b) inform the head teacher, in writing, that no such direction will be given.
- (5) The governing body must give written notice of its decision to—
- (a) the pupil, and
  - (b) the pupil's parent.
- (6) Subsection (5)(a) does not apply if the governing body considers that the pupil in question does not have the capacity to understand the information that would be given.
- (7) The head teacher must comply with a direction given under subsection (4).
- (8) Regulations may make further provision in connection with appeals under this section.

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**Changes to legislation:** There are currently no known outstanding effects for the Curriculum and Assessment (Wales) Act 2021, PART 2. (See end of Document for details)

VALID FROM 01/09/2022

#### 46 Appeals about temporary exceptions for individual children

- (1) This section applies where—
  - (a) a provider of funded non-maintained nursery education makes, varies or revokes a determination under regulations made under section 42 in relation to a child for whom the education is provided, or
  - (b) the parent of a child for whom funded non-maintained nursery education is provided asks the provider of the education to make a determination under those regulations in relation to the child, but no determination is made.
- (2) The child's parent may appeal to the local authority that has secured the education.
- (3) If an appeal is made under this section, the local authority may—
  - (a) direct the provider, in writing, to take the action that the local authority considers appropriate in respect of the determination referred to in subsection (1)(a) or the request referred to in subsection (1)(b), or
  - (b) inform the provider, in writing, that no such direction will be given.
- (4) The local authority must give written notice of its decision to the child's parent.
- (5) The provider must comply with a direction given under subsection (3).
- (6) Regulations may make further provision in connection with appeals under this section.

VALID FROM 01/09/2022

#### 47 Exception for pupils for whom arrangements are made under section 19A of the Education Act 1996

Sections 27, 28, 29 and 30 do not apply in relation to pupils for whom arrangements are made under section 19A of the Education Act 1996 (c. 56) (see, instead, Part 3).

VALID FROM 01/09/2022

#### 48 Power to make provision for further exceptions

- (1) Regulations may—
  - (a) disapply sections 27, 28, 29 and 30, or any of those sections, in cases or circumstances specified in the regulations;
  - (b) provide that sections 27, 28, 29 and 30, or any of those sections, apply with the modifications specified in the regulations in cases or circumstances specified in the regulations;
  - (c) disapply sections 34, 35 and 36, or any of those sections, in cases or circumstances specified in the regulations;

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(d) provide that sections 34, 35 and 36, or any of those sections, apply with the modifications specified in the regulations in cases or circumstances specified in the regulations.

(2) Regulations under this section may confer a discretion on a person.

**Status:**

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**Changes to legislation:**

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