

Consultation on the Curriculum and Assessment (Wales) Bill

Evidence submitted to the [Children, Young People and Education Committee](#) for Stage 1 scrutiny of the Curriculum and Assessment (Wales) Bill.

About you

Organisation: Equality and Human Rights Commission

1. The Bill's general principles

1.1 Do you support the principles of the [Curriculum and Assessment \(Wales\) Bill](#)?

Yes

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1500 words)

We support the principles of the Curriculum and Assessment (Wales) Bill but these must be underpinned by a human rights framework and a commitment to Human Rights Education.

The Equality and Human Rights Commission welcomes the opportunity to contribute to the Children, Young People and Education Committee's consultation into the general principles of the new Curriculum and Assessment (Wales) Bill.

The education system plays a vital role in establishing and reinforcing the shared values that provide the foundation for a society in which all individuals are respected and have the opportunity to flourish and there are good relations between different groups.

Human Rights Framework

The Commission believes the Curriculum and Assessment (Wales) Bill provides an important opportunity to ensure that the legislation is underpinned by a rights based framework. The Curriculum and Assessment (Wales) Bill should ensure a duty to act in accordance with the UN Convention on the Rights of the Child and enshrine it on the face of the legislation.

The Rights of the Child and Young Person's (Wales) Measure 2011 partially incorporates the UNCRC into Welsh domestic law and makes provision for Welsh Government to give further effect to children's rights in Wales. Section 1 of the Measure places a duty on Welsh Ministers to pay due regard to the UNCRC when exercising their functions. Therefore, in reforming the school curriculum, Welsh Government is obliged to meaningfully consider how children's rights can be given further effect inside their policy change; and (2) Section 5 of the Measure places a duty on Welsh Ministers to take steps to promote knowledge and understanding amongst the public (including children) of the Convention.

While the Children's Rights Impact Assessment states that the development of the new curriculum has due regard to the United Nations Convention in the Right of the Child, the Bill does not make direct reference to this. Central to the UNCRC is the principle that every child has basic fundamental rights including the right to an education that enables children to fulfil their potential.

The Social Services and Well-being (Wales) Act 2014 and Additional Learning Needs and Education Tribunal (Wales) Act 2016 both incorporate UN Treaty Conventions on the face of Welsh legislation. The Social Services and Wellbeing (Wales) Act 2014 includes provision that 'a person exercising functions under this Act in relation to a child...must have due regard to Part 1 of the United Nations Convention on the Rights of the Child.' The Additional Learning Needs and Education Tribunal (Wales) Act 2018 also sets out a duty to have regard to the United Nations Convention on the Rights of the Child, as well as a duty to the United Nations Convention on the Rights of Persons with Disabilities.

The Curriculum and Assessment (Wales) Bill would be considerably strengthened by ensuring the provisions in Part 1 of the UNCRC are incorporated on the face of the Bill. We would recommend the legislation places a duty upon all persons exercising functions under the Bill to act in accordance to the UNCRC, as opposed to 'paying due regard'. Doing so would ensure consistent principles and provisions apply across all educational settings. The omission of this represents a risk that human rights will not be considered across implementation of the Bill, leading to fewer opportunities for there to be a more equal and fairer Wales.

This framework could be further extended to include UN Conventions such as the Convention on the Rights of Persons with Disabilities (UNCRPD), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW).

Human Rights Education (HRE)

Human Rights Education should be clearly defined and embedded within the Curriculum and Assessment (Wales) Bill and shown to underpin all four purposes of the curriculum. We would recommend that Human Rights Education is added to the General implications requirements, as set out in Clause 30 of the Bill.

HRE is any learning that develops the knowledge, skills and values of human rights. The United Nations Declaration of Human Rights Education and Training (UNDHRET) provides the most comprehensive definition of HRE. Article 2(2) states that human rights education encompasses education:

- a. About human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;
- b. Through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;
- c. For human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.

This definition should be included in the legislation and be clearly shown to underpin the four purposes of the curriculum, as set out in the Curriculum Guidance. This will help to effectively embed HRE across all areas of learning. Not doing so provides a gap in the Bill on the importance of HRE.

Providing HRE in schools helps to fulfil Wales' international and domestic human rights commitments. At the international level these commitments are detailed in Article 26 of the Universal Declaration of Human Rights (UDHR), Articles 4, 29 and 42 of the UNCRC and Article 13 of the International Covenant of Economic, Social and Cultural Rights (ICESCR).

Explicit teaching about equality and human rights, including how protection from discrimination is guaranteed in the Equality Act 2010, can also help schools and the Welsh Government fulfil their Public Sector Equality Duty (PSED) obligations and their forthcoming obligations with regard to the Socio-economic duty (SED). The PSED requires listed bodies, including schools, to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations between people who share

a protected characteristic and people who do not, when carrying out their activities. Evidence suggests that teaching about diversity can foster good relations by challenging stereotypes and working towards ending discrimination and harassment.

We would also highlight the recommendation recently made by the Children, Young People and Education Committee on Children's Rights in Wales. The report recommended that the Welsh Government ensure human rights education, including children's rights with reference to the United Nations Convention on the Rights of the Child (UNCRC) is taught under the new curriculum for Wales.

To embed and sustain HRE it must be clearly defined and explicitly depicted as underpinning each of the four purposes within the legislation. We do not believe it is enough to only rely on the Curriculum Guidance to set out its importance. Furthermore, as we set out in 5.1 we believe there will be fewer opportunities to scrutinise any future changes to the Curriculum Guidance rather than the legislation.

To ensure the commitment that is within the Curriculum Guidance is mirrored in the legislation, we would suggest that HRE is added to the General Implementation Requirements as set out in Clause 30 of the Bill. This will make it clear from the outset that schools must give priority to HRE in everything that they do when designing, planning and delivering the curriculum.

We have recently undertaken research exploring human rights education in Great Britain. It considers what good practice in HRE looks like, how it is benefiting learners and includes Welsh case studies. Once published we would welcome the opportunity to work with the Children, Young People and Education Committee and the Welsh Government in sharing this research and learning with all schools and relevant stakeholders throughout Wales.

1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 500 words)

Yes there is a need for legislation to deliver what this Bill is trying to achieve so that there is legal certainty and protection.

2. The Bill's implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

(we would be grateful if you could keep your answer to around 500 words)

Protected characteristics

Children from some protected groups are currently faced with barriers in accessing their right to an education. Unless the protected characteristics of pupils are considered when designing a school's curriculum this barrier to education will continue.

We would recommend that in ensuring a curriculum is 'suitable for all pupils age, ability and aptitude' it should be stated that the needs of pupils across protected characteristics must be considered. This should be added to the General Implementation requirements, as set out in Clause 30 of the Bill.

Is Wales Fairer? 2018 is our comprehensive review of how Wales is performing on equality and human rights. With regard to attainment it shows that; attainment was substantially lower for children with SEN than those without SEN. Children with severe difficulties and children with profound and multiple learning difficulties had the lowest attainment; the lowest attainment level is achieved by Gypsy/Roma/Irish Traveller children; Low attainments at the end of compulsory education in Wales are experienced by pupils with social, emotional and behavioural impairments, speech language and communication needs, general learning difficulties, and moderate learning difficulties, children eligible for Free School Meals, Gypsy/Roma/Irish Traveller children.

It will be vital when head teachers are designing a curriculum for their school, that in ensuring it is "suitable for pupils or children of differing ages, abilities and aptitudes" the protected characteristics of their pupils are considered. This should be added to the General Implementation requirements, as set out in Clause 30 of the Bill. We would recommend there is clear reference to protected characteristics. The nine protected characteristics established in the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We welcome that Professor Williams has been appointed to lead a new working group to advise on and improve the teaching of themes relating to Black, Asian and minority ethnic communities and experiences across all parts of the school curriculum. We know that ethnicity has been shown to impact negatively on a learner's educational attainment at GCSE level in Wales and England.

In providing its concluding observations in 2016, paragraph 35 (c) the International Convention on the Elimination of All Forms of Racial Discrimination stated Government's should 'ensure pupils are taught a balanced account of the history of the British Empire and Colonialism including slavery.' The Curriculum and Assessment (Wales) Bill provides an opportunity to build the need for this learning into curriculum legislation so that it cannot be diluted by schools. It should include Britain and Wales's immigration history to enable children to understand how this has shaped all aspects of our country. This further supports the need to ensure the Bill enshrines the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Clause 43 of the Bill allows the curriculum requirements to be disapplied for pupils with Additional Learning Needs. In 2017, the United Nations Committee on the Rights of Persons with Disabilities raised its concerns regarding the increasing number of disabled children in segregated education environments. Amongst its concluding observations, the Committee recommended that the UK Government develop a comprehensive and coordinated legislative and policy framework for inclusive education. This should include data on the number of students in inclusive and segregated education which is disaggregated by protected characteristics and includes the outcome of education to reflect the capabilities of the students. The UN Convention on the Rights of Persons with Disabilities is clear that disabled people must not be excluded from the general education system (at any level) because of their disability (Article 24). Implementation of the Curriculum and Assessment (Wales) Bill should reflect the principles of Article 24 in the UN Convention on the Rights of Persons with Disabilities.

Schools exclusions

If Wales is to make sure that every child is able to fulfil their potential, then it is vital that we understand why an increasing number of children are experiencing exclusions or are being educated otherwise than at school (EOTAS) and why certain groups are overrepresented.

We raised the over-representation of certain groups in national statistics on exclusions in our state of the nation report – Is Wales Fairer? 2018. The consequences of formal exclusion from school, whether temporary or permanent, can be very serious. The high exclusion rate of pupils eligible for free schools meals has a negative impact on their attainment. Understanding and addressing the disproportionate use of exclusions experienced by certain groups of children, such as pupils eligible for free school meals and pupils with Additional Learning Needs is necessary, when considering education other than at school. This must be understood to ensure the legislation supports all pupils including those in EOTAS.

Professional learning needs

To ease implementation of the Bill, specific professional development is required to increase the education workforce's understanding of human rights education, human rights, equality and the protected characteristics. Professional training and support will also need to include compliance with legal duties and human rights frameworks including for example, training around the Public Sector Equality Duty.

We recommend that teachers and learning support workers receive training that is consistent at a national level rather than varying in quality depending on locality and provider. It is also vital that teachers are afforded sufficient time to undertake this training and evolve their practice in relation to the new curriculum. We are concerned about the timeframe for this given the disruptions to schools caused by Covid-19.

2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 500 words)

We do not believe that the Bill takes account of the potential barriers we have highlighted.

Equality Impact Assessment (EIA)

As set out in the Equality Act 2010, the Welsh Government and other listed bodies must assess the likely impact of proposed policies and practices on its ability to comply with the

general duty. We have concerns about the published equality impact assessments (EIA) and would recommend they are updated to take account of these. Our concerns are set out below.

We are alarmed to see the published EIAs have significant omissions which need to be rectified. Currently the EIAs only consider the impact of children and young people. Given the concerns we raised in Section 2.1 on professional learning needs and a diverse workforce we would recommend the EIA on the curriculum framework is updated to assess the impact on the education's workforce in Wales.

We are also aware that some schools will need to develop two syllabi for RVE. This is also not considered within the EIA and would recommend the EIA is also updated to reflect this oversight. Please see our answer to question 3.1 for further information on this.

Incorporating the EIAs into an overall Integrated Impact Assessment has led to a lack of sufficient detail. For example, within each EIA we would expect to see timescales against each planned action to ensure timely implementation. This is required in order to inform effective monitoring and evaluation of proposed mitigating action. Furthermore, there should be a section within an EIA which provides detail on how proposed actions will be monitored and evaluated in order to comply with the requirements of Regulation 8 (1)(c). This is not evident in the EIAs linked to the Explanatory Memorandum.

Any identified impacts need to be evidence based but the evidence within the published EIAs is not consistently provided. This means there is a lack of clarity on what basis the assessments have been made. If normal data gathering methods have been disrupted or are inadequate, new sources and alternative methods should be used to gain insight into potential impacts for different protected characteristics. Where existing data is available, sources should also be clearly referenced. This is critical to ensuring compliance with the requirements of Regulation 7, within the Equality Act 2010.

Regulation 5 stipulates an engagement provision but there isn't evidence that protected characteristic groups have all been consulted on the potential impact of the curriculum framework. Detail is required on how this engagement has been undertaken. It is currently not clear how the views of protected groups have shaped the full context of the Bill. We would also expect to see detail of how stakeholder feedback is to be used to evaluate the effectiveness of the published Curriculum Guidance.

When updating the EIA we recommend the concerns we have on the process are also taken into account.

Children's Rights Impact Assessment.

Children's rights are enshrined in Welsh law under the Rights of Children and Young Persons (Wales) Measure 2011. The measure places a duty on Ministers to have due regard to the UNCRC when developing or reviewing legislation and policy. This means that Ministers must give the appropriate weight to the requirements of the UNCRC, balancing them against all the other factors that are relevant to the decision in question. The Welsh Government developed the Children's Rights Impact Assessment (CRIA) to support Ministers to comply with the duty to have due regard to and to ensure compliance with the UNCRC. We strongly advise that schools and the Welsh Government consider our concerns about EIAs and apply these to the development and revision of CRIAs.

Post-implementation review

Equality considerations and implications across protected characteristics must be embedded into all of the plans to undertake a post-implementation review. This will ensure the Welsh Government are able to fully understand and assess the impact on children and young people with protected characteristics.

We note the Welsh Government plans to undertake a post-implementation review which will start with an 'evaluability assessment.' In looking to identify how high quality evidence about the implementation and impacts of the reforms can be reliably collected, we would highlight to the Welsh Government the need to gather, disaggregate, use and embed equality related evidence into its work and take an intersectional approach as a part of the PSED collecting and using relevant equality information. This is critical in meeting the general and specific duties and essential to making informed and effective decisions.

As well as an economic evaluation we would expect there to be an evaluation of the equality impacts of the implementation and effects of the reform. Although an equality impact assessment has been completed on curriculum reform, the Welsh Government must use monitoring, evaluation and review processes to ensure that the actual impact matches the impact that was anticipated, and that relevant actions have been implemented.

We understand the Welsh Government expect the longer term impact of the legislation to be understood from the outcomes for children and young people as they progress from their schooling into examinations, further and higher education and training and adult life in general. Nevertheless, it is imperative that equality implications are embedded into all plans to undertake a post-implementation review right from the beginning to be able to fully understand and assess the impact on children and young people with protected characteristics.

3. Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 500 words)

Relationships and Sexuality Education (RSE) and Religion, Values and Ethics (RVE)

In responding to the Welsh Government consultation on 'proposals to ensure access to the full curriculum for all learners', we agreed that Welsh Government should ensure all children and young people in maintained schools are required to study RSE and RVE in the new curriculum.

This support for RSE was explained to be on the basis that the Welsh Government make the curriculum more inclusive before the right to withdraw is removed. We would like to reiterate this point.

While we welcome the steps taken to strengthen RSE, there needs to be specific reference to the importance of teaching about LGBT issues in schools. We want to ensure that education instils an understanding of, and respect for difference, learning about people with different protected characteristics is key to this.

Without specific reference to LGBT in the legislation there is a risk that schools will not cover this teaching. This could lead to schools being open to debate with parents, which can be challenging and risks undermining effective learning and community cohesion.

We welcome the Curriculum Guidance includes a thematic area around sex, gender and sexuality. As stated in the guidance, central to this learning should recognise the diversity of gender and sexual identity, expression, behaviour and representation, including LGBT diversity, and how social and cultural understandings of sex, gender and sexuality have changed over time and continue to evolve. Provision of RSE will be guided by a statutory code and we have not yet had sight of this. It will be essential that relevant Codes on RSE provide specific reference to the importance and requirement of teaching about LGBT issues. The Equality and Human Rights Commission will be happy to offer advice and information to help ensure the development of these codes fully reflect a commitment to Human Rights Education and the issues raised.

The teaching of RSE and RVE needs to be evidence based, not values-based and should be inclusive of children with different protected characteristics. The importance of a strong commitment to teaching children about the world they live in is relevant to RSE. We have noted that parents will not have the right to withdraw their children from RVE as they do currently from RE in England and Wales under the 1944 Education Act. This right of withdrawal exists for all pupils in all types of schools, including schools with and without a religious character. Pupils aged 16 or over have the right to withdraw themselves from RE. Parents can also withdraw their children from part of RE and can do so without providing any explanation and so this will mark a major change.

In its response to the Commission on Religious Education, the Commission has previously argued, with regard to RE (in England), that it is important that any limitations on the right to withdrawal should be human rights compliant and should respect the rights of children and young people. We recognise that parental rights to choose how their children are educated are not absolute but expressed concern that making RE lessons compulsory for all with no right of withdrawal would seriously risk infringing those rights. Our position is different in response to this consultation because Welsh Government is proposing safeguards to make it explicit that teaching must be properly inclusive in all maintained schools. Our position is dependent upon Welsh Government safeguards being implemented.

However, we are also worried about the growing evidence of why some children are being withdrawn from RE. A survey by Liverpool Hope University (Lundie and O'Siochru, 2019) of 450 head teachers and RE coordinators in England found that the majority of participants had experienced withdrawal requests for various reasons, and a sizeable minority (41%) had experienced requests to withdraw selectively from parts of RE. This study also examined the focus for selected withdrawal amongst a sub-group of 83 respondents; in

two-thirds of cases, Islam was the focus for these parental withdrawal requests. Other more anecdotal evidence confirms that an unwillingness to learn about Islam and visiting mosques were the most common reasons for parents withdrawing children from RE. While we do not have statistical evidence from Wales to support this English evidence, there is no reason to suppose that the situation differs significantly in Wales. It will be essential that relevant Codes and guidance on RVE make it clear that such reasons are invalid. Provided that the new RVE curriculum ensures that RE is taught in an objective, critical and pluralistic manner, covers both religious and non-religious concepts, is human rights compliant and respects the rights of children and young people, then we welcome the ending of the right to withdrawal. We would encourage the Welsh Government to commission more research on the extent that parents are currently withdrawing their children from RE in Wales and the reasons that this is occurring. We would also recommend that any impact evaluation and research should consider impact on protected groups of the new RSE and RVE provisions.

We are concerned that this has not been fully considered within the published equality impact assessments (EIA). We would recommend that the EIA is updated to reflect this omission. This will help to consider how this requirement will better advance equality of opportunity.

4. Financial implications

4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the [Explanatory Memorandum](#))? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 500 words)

Not answered

5. Powers to make subordinate legislation

5.1 Do you have any comments on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the [Explanatory Memorandum](#)). If no, go to question 6.1.

(we would be grateful if you could keep your answer to around 500 words)

We are concerned there is a gap in the requirement for statutory guidance in that it will not be subject to any Senedd Procedure. This includes statutory guidance intended to underpin and amplify the four purposes, the six AOLWs and the three cross-curricular skills. These will be key tools to ensure implementation of the design and delivery of the new curriculum in Wales. It is vital that all aspects of the curriculum are subject to scrutiny, which includes meaningful engagement with all relevant stakeholders.

We expect the earlier points around enshrining the relevant UN Conventions in the legislation to enable a rights based framework and need to fully implementing human rights education in schools (made in section 1.2) to be clearly evident within any subordinate legislation under the Bill, such as the What Matters Code and Progression Code. This will be imperative to each of the codes, directions and guidance produced. The Equality and Human Rights Commission will be happy to offer advice and information to help ensure the development of these codes fully reflect a commitment to Human Rights Education and the issues raised in this consultation response.

Furthermore, we would wish to remind the Welsh Government of the requirements of the Public Sector Equality Duty and specific duties under the Equality Act 2010, when making subordinate legislation and producing statutory documents.

6. Other considerations

6.1 Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

Assessments

We note there is little detail included on the face of the Bill regarding assessment. Any assessment provisions should be subject to a rigorous Equality Impact Assessment to consider and take any potential action to ensure the needs of protected groups.

As yet, we do not have enough information on how the qualifications will support the Curriculum. In our Qualified for the Future consultation response to Qualifications Wales we set out the need to ensure a consistent approach is taken to curriculum and assessment reform. Both of these elements need to be underpinned by a human rights approach. This further highlights the importance of our earlier recommendations in section 1.2 for

embedding a Human Rights framework and human rights education on the face of the Bill.

We are aware that Qualifications Wales will be further consulting on what qualifications will be available in the future for 16 year olds. We welcome that following the Qualified for the Future consultation the principles to shape future qualifications include an 'inclusive range that meets the needs of all learners'.

As Qualifications Wales continues reviewing the range of qualifications available, further exploration on how children and young people with different protected characteristics and those from socio-economic disadvantages areas, will have fair access to the qualifications offered, and be assessed fairly will be required. The particular needs of certain groups need to be considered when proposing any changes to the qualifications process. Qualifications Wales must: continue to equality impact assess as they make key decisions on new areas; and take action to address and mitigate any disproportionate impact on learners with protected characteristics.

Throughout the summer there has been a lot of attention on qualifications, with the cancellation of the exam series for 2020. The Commission raised concerns about the potential implications for ethnic minority pupils and children with Additional Learning Needs. In August 2020, the Education Minister announced an Independent Review of the arrangements for awarding grades in 2020. We would strongly recommend that the impact on protected groups is to be considered as part of this review. This will also support the Welsh Government's compliance with the PSED. Furthermore, all the findings from the review should be built into the next stages of Qualifications Wales work to determine what future GCSEs look like.

PSED

It needs to be explicit that schools must comply with the Public Sector Equality Duty (PSED) when designing and delivering a curriculum.

The PSED requires schools to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. The Commission is the regulator for monitoring and enforcing the public sector equality duty and the Welsh specific equality duties.

Schools must comply with the Public Sector Equality Duty (PSED), both the general duties and the specific duties for Wales. This means that in designing their curriculum Head Teachers must operate within this legislation to ensure, for example engagement with people with protected characteristics, assessing impact and using equalities data. The PSED also includes a requirement to continue to monitor the impact of a policy change.

In our *Is Wales Fairer?* 2018 report we recommended that to focus public bodies in Wales on addressing key inequalities, regulatory bodies, including Estyn should inspect for action and progress on those inequalities. We would want to reiterate this recommendation.

The Welsh Government may wish to produce further guidance for schools and Governors to assist them with complying with the PSED when designing and delivering a curriculum.

A diverse workforce

A diverse workforce is needed to fully enable an inclusive curriculum. The evidence shows that a large proportion of teachers and learning support workers in Wales are female. The Education Workforce has not yet published data on ethnicity, disability etc. and will be publishing updated data in due course.

We recommend that data is collected and published to understand the levels of diversity of teaching staff and learning support staff in Wales. If required the Welsh Government should take positive action to increase the diversity of the teaching workforce, so the curriculum itself will be more inclusive, and issues such as reducing attainment gaps are improved.

Impact of Covid-19

We have been concerned during the pandemic that existing inequalities in education are deepening. During the last five months public bodies including schools have, understandably, focused their attention on different ways of providing learning to pupils. This will undoubtedly have taken time away from schools in preparing for the new curriculum. This needs to be factored in to ensure effective planning for assessment and curriculum design and implementation. Doing so will ensure the inequalities highlighted in our response are not further exacerbated and help ensure the learning needs of all children and young people are met and attainment gaps reduced.

