

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: Mind Cymru

1. The Bill's general principles

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

Partly

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)

The new curriculum provides a unique opportunity to place the mental health of all our young people at the heart of their learning and school experience. We wholeheartedly support Welsh Government's aim to expand the current curriculum offer for children and young people, and were encouraged by the findings of Professor Donaldson's review, particularly in the identification of the importance of mental health and wellbeing.

Position of Mental Health in the Curriculum and Assessment (Wales) Bill

The recent experience during the pandemic has clearly highlighted how important schools are in promoting and protecting young people's mental health, as well as acting as a point where problems can be identified early and support put in place. This experience and the considerable discussions around the impact of the pandemic more generally on young people's mental health creates a context where ensuring mental health is at the heart of every pupils experience is something that has become increasingly important.

We recognise that the legal position of mental health has been strengthened from initial proposals with Welsh Government committing to producing a statutory 'What Matters Code' meaning mental health will have to be covered in the delivery of the Health and

Wellbeing Area of Learning and Experience. This has been further supported through the publication for consultation, statutory guidance relating to developing a whole school approach to mental health. However, we still feel that this is a missed opportunity to place mental health right at the heart of every pupils learning and experience. This is why we believe that mental health should be placed as a mandatory part of the curriculum (on the same footing as Relationships and Sexuality Education and Religion, Values and Ethics), with relevance across the curriculum. In all the discussions in Committee and during the various consultations relating to this piece of legislation and accompanying guidance we have not heard a compelling reason why the two mandatory elements of the new curriculum mentioned above should have that status and mental health should not.

Young people we have spoken to have expressed how they do not feel they have enough time during the school day to develop conversations or understanding about their mental health. Currently the provisions relating to mental health are just one of five 'Statements of What Matters' in one of the six Areas of Learning and Experience, so there continues to be a risk that time is squeezed for a full and empowering exploration of issues relating to mental health. If mental health were to be placed on a mandatory and cross cutting basis then this would enable and encourage education professionals to think more creatively about when a discussion about mental health could be appropriately introduced across the content of the curriculum. This would not only provide more time but would also normalise the discussion around mental health as something that can appropriately and safely happen at different points of the school day. This would reflect the approach of campaigns such as Time to Change Wales, where encouraging conversations about mental health are promoted as a key aspect of tackling stigma.

It is important to note that in taking this step we are not asking teachers to take on any additional role. Instead, we are legitimising the issues they already handle in schools, creating the opportunity for schools to be proactive and empowering school staff and school leaders to play their vital part in a systems-wide approach. This should contribute to improved learner outcomes as pupils will feel more confident and able to concentrate knowing they can seek help if they have any concerns.

We have noted the response that mental health would also be covered through the RSE mandatory element of the new curriculum and whilst we welcome the mandatory nature of RSE we are not convinced that this will provide the comprehensive opportunity to explore mental health without connecting it to specific situations or issues. We believe the same opportunity should be awarded to mental health, given its overarching nature and impact on all areas of the curriculum.

Mental health as a thematic element of the curriculum could fit within a number of AoLEs and seamlessly weave through each of them.

It has been hugely positive that this Welsh Government has made a strong commitment to making mental health one of its priority areas within the Programme for Government. Making this amendment to the Bill would be realising the intention of the Programme for Government within education policy and legislation.

Application of Health and Well-Being Area of Learning and Experience to Education Other Than At School (EOTAS)

Clause 55 sets out the minimum requirements for curriculums for pupil's receiving EOTAS. This is similar to the position for PRUs however EOTAS provision will only have to provide education on health and wellbeing as far as is appropriate for the child (clause 55(3)). This means that unlike every other child covered by this Bill, learning about health and wellbeing will not be mandatory for pupils in EOTAS

The explanatory notes say that the intention here is to allow EOTAS providers to decide what is reasonably possible and/or appropriate to provide in teaching and learning in a particular area of learning and experience or mandatory element. However, it will be mandatory for every other child covered under the Bill to be taught about health and wellbeing.

Children receiving EOTAS could include a range of different types of children including:

- Children in psychiatric wards receiving on site education
- Children who cannot attend school because of anxiety
- Children who have been permanently excluded

As there is currently no guidance available for the application of the curriculum to these children and young people we would seek clarification of what would be considered 'as appropriate' to ensure that no child or young person is unable to develop their understanding of mental health, the vocabulary to discuss it and the ways in which they can seek help.

Pupils who are affected by disapplication of the curriculum

Clause 44 permits the Welsh Ministers to make further regulations which would allow head teachers to disapply the curriculum in respect of individual pupils. These regulations have

not been published. In addition, the guidance around disapplication will not be published until after the Bill has passed.

Pupils will only have a personal right to information about the disapplication and of appeal against the decision if they have capacity. This potentially excludes a large number of children from exercising those rights (see response to 3.1).

The Bill, explanatory notes and Curriculum for Wales guidance provide no detail on when it could be appropriate to disapply the curriculum for individual pupils but it is reasonable to assume that it may include pupils who are struggling in school because of their mental health. We would seek clarification on under what circumstance disapplication of the curriculum would be made.

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, as we know that mental health is still not consistently being prioritised within school communities across Wales. This is despite the fact children and young people themselves are seeking the knowledge and information they need to better understand mental health and where to go for support; and that school staff (in the widest sense) acknowledge their increasing role in identifying early symptoms and supporting children and young people to get their mental health needs met by a range of appropriate partners. Without recognition of the schools role in supporting pupils mental health, it would be unlikely that the issue would be uniformly addressed.

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)

Ensuring there is sufficient awareness, support and training available for education professionals in order to not only feel confident in leading and responding to discussions about mental health, but also feel supported with their own mental health. An effective

whole school approach to mental health should provide some support for the later point, but development work would need to be undertaken to ensure all teachers feel confident.

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)

Essentially it would not be for the Bill itself to tackle these concerns rather any training and development plans that support the roll out of the curriculum as a whole

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)

We would ask the Welsh Government to clarify the use of "capacity" at certain points of the Bill. Pupil's rights to information and rights of review within the Bill are sometimes tied to their "capacity". In our view, as a legal term, capacity only applies to people who are 16 and above. The Bill's use of this terminology could (1) introduces legal uncertainty (2) potentially excludes the majority of children affected by the Bill from exercising key rights

Capacity is defined under section 2 of the Mental Capacity Act 2005 as an inability "to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain". It only applies to people aged 16 and above.

A similar concept of "competence" applies to decision making for children who are 15 and below. A child who has sufficient understanding and intelligence to enable them to understand fully what is involved in a proposed action will also have the competence to consent to that action. It should be noted that the concept of Gillick competence developed in relation to medical intervention and is therefore not directly applicable to education provision.

The purpose of this Bill is to provide a statutory framework for supporting curriculum and assessment arrangements for children and young people between 3 - 16 years old. As a result, the vast majority of the children affected by this Bill will be under 16 and therefore not covered by the concept of capacity as defined in the Mental Capacity Act 2005.

However, there are a number of important rights that only children who have “capacity” (and must by extension be 16 or above) can enforce. They include:

- Clauses 34 (duty to provide information if pupil choice is disapplied),
- Clause 35 (right to request a review if pupil choice is disapplied),
- Clause 45 (right to information - disapplication of curriculum applied to individual pupil)
- Clause 47 (right to appeal - disapplication of curriculum applied to individual pupil)

In the rights detailed above, capacity must be determined by the head teacher or governing body.

The consequence of using capacity as the threshold for a child (as opposed to their parent) being able to enforce key rights is that it could preclude the vast majority of children affected by the Bill. We would ask that there is further clarification given to the terminology to prevent any confusion.

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)

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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)

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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)

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