

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

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Constitutional and Legislative Affairs Committee Draft Report

Title: The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

Procedure: Negative

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify, by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order sets out those arrangements.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument - (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 5 contains the following unusual provision –

“The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient.”

The enabling power is section 108(11) of the Education Act 2002 which reads as follows-

“An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Welsh Ministers to be expedient; and **any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order.**”

Thus Welsh Ministers will be able to make further provision to give full effect to or supplement the provisions of the current Order without

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having to make an amending order that would be subject to Assembly scrutiny. Nevertheless, it is a power that has been used on a number of occasions by the Assembly (to which the power was originally granted) and by Welsh Ministers (to whom the power was transferred following the Government of Wales Act 2006).

This is not an unusual or unexpected use of the power in section 108(11), which would be reported under Standing Order 21.2(ii), but a power that is itself unusual, and therefore of importance.

Legal Advisers
Constitutional and Legislative Affairs Committee

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