

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: Bangor University Law School

1. The Bill's general principles

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

Don't have a view

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 are only responding to question 6.

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)

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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)

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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)

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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)

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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)

Response on behalf of xx xxxxx xxxxx and xxx xxxxxxxx (Bangor University Law School)

We wish to raise two issues concerning the Curriculum and Assessment (Wales) Bill: consolidation of education law and the process for settling disputes about the curriculum. Our response arises out of the research project Public Administration and A Just Wales: Education, part of larger project funded by the Nuffield Foundation. Our views do not necessarily represent those of the Nuffield Foundation. The project considered the avoidance and resolution of disputes in education and heard from a wide range of stakeholders regarding their experiences.

Our full report on education may be found at:

<https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/11/Admin-Justice-Wales-Education-Full.pdf> and a summary of the Education report is available at:

<https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/11/Admin-Justice-Wales-Education-Summary.pdf> These reports were written before the Curriculum Bill was published.

Consolidation of the law: During our research project, a frequent comment in our workshops and focus groups concerned the plethora of legal instruments on education – Acts, regulations and guidance as well as case law – and that this can prove confusing, especially for lay people.

Education law was consolidated in the Education Act 1996. Part V of that Act dealt with the curriculum, chapter 2 covering ‘Secular education’ and chapter 3 dealing with ‘Religious education and worship’. Since then however, the provisions that formed Part V of the 1996 Act have been split between a number of statutes – the 1996 Act itself, the School Standards and Framework Act 1988, and the Education Act 2002. This makes it more difficult to locate the law on the curriculum, especially for a lay person.

The current Bill provides an opportunity to bring together the various provisions dealing with the curriculum in Wales. However, as it stands, instead of bringing together what were chapters 2 and 3 of the Education Act 1996, which formed a fairly comprehensive code on the law relating to the curriculum, this Bill leaves the provisions on religious education and worship (ss 375, 390-392, 394-399) in the 1996 Act and makes amendments or inserts new Wales-only sections to the 1996 Act (eg s375A, s391(1A), s396A). Similarly, the provisions on collective worship remain part of the School Standards and Framework Act 1998 subject to amendments or additions of Wales-only provisions.

Given the general moves towards making the law more accessible in Wales, we consider that a failure to consolidate all the legal provisions on the curriculum in one Senedd Act would be an unfortunate lost opportunity. Having to locate provisions on a particular area in more than one Act represents a barrier to the accessibility of Welsh law, especially for lay people.

Dispute settlement

We consider that the current Bill presents a useful opportunity to consider the process for dealing with disputes concerning the curriculum. We note that the Bill provides (in ss 33-35) a specific dispute settlement mechanism in relation to determinations to disapply pupil choice. However, otherwise, section 409 of the Education Act 1996 remains the provision on dealing with curriculum disputes. In line with our previous submission on consolidating the law, we consider that the law relating to curriculum disputes should also be part of the current Bill.

However, it is also timely to consider the content of section 409. Local authorities are required to make the necessary arrangements under section 409 but it is school governing bodies that are obliged to publish them. Consequently, it is difficult to gain an overview of the arrangements currently in place. There has been no guidance on this issue since before devolution. In a 2005 report, the Children's Commissioner for Wales found that only 16 local authorities had a procedure under section 409, 4 reported they had no procedure and 2 were unable to answer the question. In our research, we sent a Freedom of Information request to all Welsh local authorities asking about their section 409 arrangements and found a variety of approaches, with one local authority telling us that they did not deal with complaints of this kind. We formed the view that the intention behind section 409 to have a system for curriculum complaints is not operating consistently across Wales. Again, we consider that this Bill presents an opportunity to consider whether the current system is fit for purpose and that, whatever system is decided to be appropriate, provision on settling disputes about the curriculum is included in the current Bill.

