

Explanatory Memorandum to the Education (Arrangements for Assessing Reading and Numeracy in the Curriculum for Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Public Services and Welsh Language Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Arrangements for Assessing Reading and Numeracy in the Curriculum for Wales) Regulations 2024.

Lynne Neagle MS
Cabinet Secretary for Education

13 May 2024

PART 1

1. Description

1. The Education (Arrangements for Assessing Reading and Numeracy in the Curriculum for Wales) Regulations 2024 (“these Regulations”) are needed to give legal effect to the assessment arrangements for reading and numeracy in the Curriculum for Wales (“CfW”) for pupils who attend schools (other than a community special school established in a hospital) maintained by a local authority in Wales (“the national personalised assessments”).
2. The national personalised assessments replace the reading and numeracy tests (“the national tests”) which are given legal effect by the Education (National Curriculum) (Assessment Arrangements for Reading and Numeracy) (Wales) Order 2013 (“the 2013 Order”).
3. The Education (Revocation of Arrangements in the National Curriculum and Miscellaneous Amendments) (Wales) Regulations 2022 (“the Revocation Regulations”) made transitional provision so that the 2013 Order continues to work with the new CfW during the period it is being rolled out. The Revocation Regulations revoke the 2013 Order on 1 September 2024.
4. The national personalised assessments are sat online and assess the same skills as the national tests. However, there are some differences to the way the national personalised assessments will be administered in comparison to the way the national tests have been administered—
 - a. these Regulations do not include a requirement for the head teacher to administer the national personalised assessments in accordance with a timetable set by the Welsh Ministers. Instead the head teacher may decide when in the school year pupils will sit the national personalised assessments,
 - b. unlike in the 2013 Order these Regulations provide that the head teacher may require pupils sit the national personalised assessments at least once in a school year. Therefore, a pupil may be required to sit the national personalised assessments more than once in a school year,
 - c. these Regulations do not require the head teacher to sign a declaration to the effect that the national personalised assessments have been administered in accordance with the provisions of article 6 of the 2013 Order,
 - d. these Regulations do not require the local authority that maintains the school to monitor the administration of the national personalised assessments, and

- e. these Regulations do not place a duty on the Welsh Ministers to investigate any matter referred to them as a result of any monitoring of the national personalised assessments or to correct results as appropriate.
5. These changes are designed to ease the burden on schools in administering the national personalised assessments and to reflect the current practice in schools.
6. In addition, these Regulations amend the Provision of Information by Head Teachers to Parents and Adult Pupils (Wales) Regulations 2022 (“the Provision of Information Regulations”). Paragraph 6 of Part 2 of the Provision of Information Regulations requires the head teacher to provide a brief commentary on the results of the national tests (“the reporting obligation”). In consequence of the revocation of the 2013 Order from 1 September 2024 regulation 6 of these Regulations substitutes a reference to these Regulations for the reference to the 2013 Order in paragraph 6 of Part 2 of the Provision of Information Regulations. This is necessary to ensure that the reporting obligation will continue in respect of the nationalised personalised assessments.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

1. These Regulations are being made under sections 56(1), (3) and (6), 74(1)(a) and 75(1) of the Curriculum and Assessment (Wales) Act 2021 (“the 2021 Act”).
2. The 2021 Act establishes a new framework for a curriculum and makes provision about assessment for pupils and children in Wales.
3. Section 56 of the 2021 Act provides that the Welsh Ministers must make provision by way of Regulations for assessing in relation to the relevant curriculum. “Relevant curriculum” has the meaning given to it in section 56(5) of the 2021 Act. Section 74(1)(a) of the 2021 Act provides a power for the Welsh Ministers to make such consequential provision as they think necessary in order to give effect to, or in consequence of, any provision made by or under the 2021 Act.
4. These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

1. These Regulations ensure that the arrangements for assessing reading and numeracy continue from 1 September 2024. The effect of these Regulations is that the national personalised assessments replace the national tests.
2. In a commitment to raise literacy and numeracy standards, the Welsh Government introduced statutory national tests in 2013. In 2018, the Welsh Government initiated a move from paper-based tests to online adaptive assessments in reading and numeracy, known as 'national personalised assessments', with the purpose of supporting skills progression. Amendments to the 2013 Order were made to give legal effect to this change in the [Education \(National Curriculum\) \(Assessment Arrangements for Reading and Numeracy\) \(Wales\) \(Amendment\) Order 2018](#).

Subsequently the Revocation Regulations made transitional provision outlined above so that the 2013 Order continues to work with the new CfW during the period it is being rolled out. The Revocation Regulations revoke the 2013 Order on 1 September 2024.

5. Consultation

1. No public consultation has taken place in respect of these Regulations.
2. The 2021 Act does not require a consultation prior to making provision for assessment pursuant to section 56(1), (3) and (6) or section 74(1)(a) of that Act. Further the purpose of these Regulations is to ensure the continuation of existing arrangements for assessing and reporting in respect of reading and numeracy skills. The national personalised assessments are sat online and assess the same skills as the national tests.
3. However, as noted above there are some differences to the way the national personalised assessments will be administered in comparison to the way the national tests have been administered. Those changes have been made to reflect the current practice and ease the burden on schools in administering the assessments. As such it was considered that a consultation was not necessary and would add unnecessarily to the burden of schools in considering the response.
4. These Regulations ensure the requirements for administering the assessments align with current practice in schools. It will not require head teachers or other school staff to do anything additional to current practice, and for some aspects, which are no longer relevant to online delivery of the assessments, requirements are being removed.

6. Regulatory Impact Assessment (RIA)

1. The [Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments](#) was considered in relation to these amendments.
2. A Regulatory Impact Assessment has not been conducted in this instance for the following reasons:
 - The national personalised assessments are sat online and assess the same skills as the national tests. The policy given legal effect in these Regulations remains the same. They do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. In other words, the same pupils will sit the same online tests in the same way as before.
 - Whilst there are some differences to the way the national personalised assessments will be administered in comparison to the way the national tests have been administered, those reduce the burden on schools and reflect the current practice:
 - these Regulations do not include a requirement for the head teacher to administer the national personalised assessments in accordance with a timetable set by the Welsh Ministers. This leaves the matter to discretion of the head teacher and no longer requires the head teacher to familiarise themselves with a set of rules set out in a separate document,
 - unlike in the 2013 Order these Regulations expressly provide that the head teacher may require pupils sit the national personalised assessments at least once in a school year. The 2013 Order did not prohibit the tests being used on more than one occasion, but this change ensures there is clarity on the issue on the face of Regulations,
 - these Regulations do not require the head teacher to sign a declaration to the effect that the national personalised assessments have been administered in accordance with the provisions of article 6 of the 2013 Order. This will reduce the burden on head teachers,
 - these Regulations do not require the local authority that maintains the school to monitor the administration of the national personalised assessments. This will also reduce the burden on local authorities and schools in their area, and
 - these Regulations do not place a duty on the Welsh Ministers to investigate any matter referred to them as a

result of any monitoring of the national personalised assessments or to correct results as appropriate. There were no instances of any such investigation being carried out in relation to the national personalised assessments and so this change ensures these Regulations reflect the current practice.

- Some of the changes made by these Regulations reflect the fact that the terminology used in the 2021 Act in respect of the CfW is different to that used in Part 7 of the Education Act 2002. For example, the 2021 Act does not refer to key stages or subjects which were used in Part 7 of the Education Act 2002. Those terms were used in the 2013 Order and so there was a need to make transitional provision in the Revocation Regulations. These Regulations reflect the terminology of the 2021 Act and so far as those changes are concerned are technical only.