

Report on the Residential Outdoor Education (Wales) Bill

March 2024



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About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Huw Irranca-Davies MS
Welsh Labour



Alun Davies MS
Welsh Labour



Samuel Kurtz MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

The following Member attended as a substitute during the scrutiny of the Bill:



James Evans MS
Welsh Conservatives

Contents

1. Introduction	5
The purpose of the Bill	5
Background	6
The Committee’s remit	6
2. Legislative competence	8
General	8
Our view	8
3. General observations	9
The need for the legislation	9
The purpose and effect of the legislation	11
Balance between what is on the face of the Bill and what is left to subordinate legislation	14
The absence of a definition of residential outdoor education	14
Our view	16
4. Specific observations on particular sections and powers to make subordinate legislation	19
Section 1(2) – Provision of residential outdoor education	19
The Residential Outdoor Education Code	20
Our view	22
Section 1(3) – Duty to issue guidance in respect of residential outdoor education	23
Guidance must provide that residential outdoor education be provided in Welsh, subject to availability, where requested by a school	26
Our view	27
Section 2 – Funding for residential outdoor education	29

Our view.....	30
Section 5 – Coming into force	31
Our view.....	32

1. Introduction

On 24 November 2023, the Residential Outdoor Education (Wales) Bill (the Bill)¹ was introduced by Sam Rowlands MS (the Member in charge). He also laid an accompanying Explanatory Memorandum (the EM).²

1. The Business Committee referred the Bill to the Children, Young People and Education (CYPE) Committee on 14 November 2023, and on 21 November 2023 set a deadline of 22 March 2024 for reporting on its general principles.³
2. In November 2023, the Member in charge issued a statement of policy intent for subordinate legislation to be made under the Bill.⁴

The purpose of the Bill

3. Within the EM, the Member in charge states that the purpose of the Bill is “to enable all pupils in maintained schools to experience residential outdoor education.”⁵
4. According to its accompanying explanatory notes, the Bill has three substantive sections:
 - section 1 places a duty upon the Welsh Ministers to ensure that residential outdoor education is experienced by all pupils at least once during their time at school;
 - section 2 obliges the Welsh Ministers to provide sufficient additional funding to local authorities to ensure that schools can provide residential outdoor education as required by the Bill; and

¹ Residential Outdoor Education (Wales) Bill, as introduced

² Residential Outdoor Education (Wales) Bill, [Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes](#), November 2023

³ Business Committee, [Timetable for consideration: Residential Outdoor Education \(Wales\) Bill](#), November 2023

⁴ Residential Outdoor Education (Wales) Bill: [Statement of policy intent for subordinate legislation and guidance to be made under this Bill](#), November 2023

⁵ EM, paragraph 8

- section 3 is a technical consequential amendment to provide that no charge may be made to pupils for board and lodging for residential outdoor education provided under the *Curriculum and Assessment (Wales) Act 2021* (the 2021 Act).⁶

Background

5. Standing Order 26.87 provides that, from time to time, the Llywydd must hold a ballot to determine the name of a Member, other than a member of the government, who may seek agreement to introduce a Bill (a Member Bill).⁷

6. On 13 July 2022, the Deputy Presiding Officer announced that the Member in charge's proposal for an Outdoor Education (Wales) Bill had been successful in a Member Bill ballot.⁸

7. On 17 August 2022, in accordance with Standing Order 26.91A, the Member in charge laid an Explanatory Memorandum for the proposed Bill. Within, he stated that the proposed Bill would “move Outdoor Education from an enrichment activity to an entitlement component of the curriculum, removing it from the sphere of uncertainty in local authority finance, and ensuring equity for the children and young people of Wales.”⁹

8. On 26 October 2022, the Member in charge obtained the Senedd's agreement to introduce the Bill.¹⁰ During the debate on the motion to seek the Senedd's agreement, Jeremy Miles MS, the Minister for Education and Welsh Language (the Minister), stated that the Welsh Government could not support the Bill as proposed.¹¹

The Committee's remit

9. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the

⁶ EM, paragraph 419

⁷ See the [Guide to the Member Bill Process](#), published in September 2021, for further information about the Member Bill procedure.

⁸ Plenary, [13 July 2022, Record of Proceedings](#)

⁹ [Explanatory Memorandum laid under Standing Order 26.91A: Outdoor Education \(Wales\) Bill](#), August 2022. The short title of the Bill was subsequently changed to the Residential Outdoor Education (Wales) Bill.

¹⁰ Plenary, [26 October 2022, Record of Proceedings](#), item 6

¹¹ Plenary, 26 October 2022, RoP [206]

competence of the Senedd or the Welsh Ministers, including the quality of legislation.

10. In our scrutiny of Bills introduced into the Senedd, our approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the rights protected by the European Convention on Human Rights;
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen in relation to the granting of powers to the Welsh Ministers to make subordinate legislation; and
- any other matter we consider relevant to the quality of legislation.

11. We took evidence from the Minister in respect of the Bill on 22 January 2024.¹² We also considered a paper submitted by the Minister in respect of the Bill.¹³

12. We took evidence from the Member in charge on 5 February 2024.¹⁴

¹² LJC Committee, [22 January 2024](#), Record of Proceedings

¹³ [LJC\(6\)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education \(Wales\) Bill](#), December 2023

¹⁴ LJC Committee, [5 February 2024](#), Record of Proceedings

2. Legislative competence

The Member in charge is satisfied that the Bill would be within the legislative competence of the Senedd.¹⁵

General

13. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

14. The Llywydd, the Rt Hon Elin Jones MS, stated that the Bill as introduced would be within the legislative competence of the Senedd.¹⁶

15. The Member in charge confirmed to us in oral evidence that he considered the provisions of the Bill to fall within the legislative competence of the Senedd.¹⁷

16. The Minister also told us that he considered the Bill's provisions to be within legislative competence.¹⁸

Our view

17. We note the evidence in relation to matters of legislative competence from both the Member in charge, and the Minister.

18. We also note the Llywydd's statement that, in her view, the provisions in the Bill would be within the legislative competence of the Senedd.

¹⁵ EM, Declaration of Legislative Competence

¹⁶ Senedd Cymru, [Residential Outdoor Education \(Wales\) Bill: Presiding Officer's Statement on Legislative Competence](#), 24 November 2023

¹⁷ LJC Committee, 5 February 2024, RoP [24]

¹⁸ LJC Committee, 22 January 2024, RoP [7]

3. General observations

The need for the legislation

19. The Member in charge states in the EM that the Bill will “move residential outdoor education from an enrichment to the curriculum, which is often viewed as a ‘nice to have’, to an entitlement of the education offer”.¹⁹ He states that the Bill will also provide for a coordinated and funded approach to giving the opportunity of a residential outdoor education.²⁰

20. He therefore states in the EM that the Bill will address two situations, whereby:

- “not all schools organise outdoor education residentials”; and
- “economic inequality and other factors can mean that children and young people miss out”.²¹

21. The Member in charge justified the need for the Bill in oral evidence:

“As the Bill lays out, I believe every child should have this opportunity [to receive residential outdoor education] provided to them at least once in their schooling. The reason why I think legislation is necessary for that is to provide that guarantee for those young people.”²²

22. The Minister however stated within his evidence paper that he believed the Bill is “unnecessary”, as:

“... schools already have the legal powers to provide residential outdoor education if they wish. ... The Bill makes amendments to the Curriculum and Assessment (Wales) Act 2021 (The 2021 Act) which are not appropriate as they do not fit with the legislative scheme or the principles of that Act.

The new curriculum makes ample provision for outdoor experiences and the Explanatory Memorandum for the Bill does not adequately make the case for why pupils must be

¹⁹ EM, paragraph 9

²⁰ EM, paragraph 11

²¹ EM, paragraph 15

²² LJC Committee, 5 February 2024, RoP [5]

offered residential outdoor education. The Bill has the effect of making ROE [residential outdoor education] compulsory.”²³

23. In his oral evidence, the Minister stated that, if the intention of the Bill is to provide a “mandatory approach”, existing regulation-making powers could be used to deliver that outcome; although if its intention is to provide an “offer”, then primary legislation would be required.²⁴

24. The Minister also told us:

“There's an outdoor learning theme in the curriculum ... one of the conversations I've had with the Member—and I've repeated this in the Chamber—is I think there's a real opportunity for us to develop curriculum guidance that enables that to become a larger feature of the curriculum, under the existing regime that we have.”²⁵

25. We asked the Member in charge whether he believed the Bill’s aims could be met through non-statutory means or subordinate legislation. He told us in response:

“I am aware there are provisions in the Curriculum and Assessment (Wales) Act 2021 that give the Welsh Ministers power by regulations to amend areas of learning and experience, which include, of course, residential outdoor education as part of the curriculum.”²⁶

26. However, he told us that primary legislation would ensure that an offer of residential outdoor education would be “compulsory”, and would also ensure that compulsion is “futureproofed”.²⁷

27. An official accompanying the Member in charge also stated that primary legislation would be required to achieve the purpose of section 2 of the Bill, which will impose a duty on the Welsh Ministers to fund the provision of residential outdoor education in line with the Bill’s requirements.²⁸

²³ LJC(6)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education (Wales) Bill, December 2023, paragraphs 2.1-2.2

²⁴ LJC Committee, 22 January 2024, RoP [15]

²⁵ LJC Committee, 22 January 2024, RoP [32]

²⁶ LJC Committee, 5 February 2024, RoP [7]

²⁷ LJC Committee, 5 February 2024, RoP [7]

²⁸ LJC Committee, 5 February 2024, RoP [15, 17]

The purpose and effect of the legislation

28. As previously stated, within the EM, the Member in charge states that the purpose of the Bill is “to enable all pupils in maintained schools to experience residential outdoor education.”²⁹

29. Within the EM, the Member in charge also states that, under the Bill’s provisions, children and young people “will be encouraged but not compelled to participate in residential outdoor education.”³⁰

30. The Minister however told us that the Bill’s explanatory memorandum is “at odds” with the Bill’s objectives:

“The EM states that the key aim of the Bill is to offer residential outdoor education to pupils in mainstream. So, there’s an inconsistency with the actual effect of the Bill, because the Bill itself makes it a compulsory part of the curriculum.”³¹

31. Within his evidence paper, the Minister also stated:

“The Bill adopts a one size fits all approach by effectively requiring all schools and settings to offer a ROE [residential outdoor education] and for all pupils to undertake a ROE. The effect of the Bill is to make ROE compulsory and so it undermines that flexibility the 2021 Act now provides for schools and other settings.”³²

32. In response to Minister’s view, the Member in charge told us:

“The legal duty that the Bill imposes is for the Welsh Ministers to take all reasonable steps to ensure that a free course of residential outdoor education is provided once to a child at a maintained school. So, the compulsory part is that it’s provided to a child in a school, and this gives each child the opportunity to take up that provision.”³³

33. The Member in charge also highlighted that “existing mechanisms” allow pupils to “not take part in that offer” of the provision of residential outdoor

²⁹ EM, paragraph 8

³⁰ EM, paragraph 13

³¹ LJC Committee, 22 January 2024, RoP [13]

³² LJC(6)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education (Wales) Bill, December 2023, paragraph 3.3

³³ LJC Committee, 5 February 2024, RoP [47]

education; that existing mechanism is provided in regulations made under section 42 of the 2021 Act.³⁴

34. Section 42 of the 2021 Act enables the Welsh Ministers to make regulations to enable a headteacher to temporarily disapply some, or all, elements of the curriculum in relation to an individual pupil.

35. The Welsh Ministers made the Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022 (the 2022 Regulations) using the power in section 42 of the 2021 Act.³⁵

36. Regulation 4(1) of the 2022 Regulations provides that a headteacher may only disapply the curriculum in relation to a pupil temporarily only if the headteacher is satisfied:

- that it is not for the time being appropriate to implement the curriculum for that pupil; and
- the circumstances that give rise to that opinion are likely to change significantly so that, within 6 months of the date of a disapplication coming into force, it will be appropriate to implement the curriculum for that pupil.

37. Regulation 10 of the 2022 Regulations provides that a pupil, or a pupil's parent, may request a headteacher to make such a disapplication; it also provides that a request must include the reasons for which it is made.

38. The Minister shared the following concern in respect of the Member in charge's suggestion that regulations under section 42 of the 2021 Act could be used as a mechanism for a pupil to "not take part in the offer" of the provision of residential outdoor education as part of the curriculum, as proposed by the Bill:

"Because of the way the curriculum is designed and devised, it's not really expected that [the power within section 42 of the 2021 Act] will be used very much because the curriculum is an organic thing ... the risk is—and I think it's a pretty significant risk—that section 42 will start doing all the heavy lifting for this new part of the legislation, and you've got to give reasons for why you want to exempt your child from a part of the curriculum that is mandatory. And you can imagine the sorts of reasons put forward for not wanting to send a child away on a

³⁴ LJC Committee, 5 February 2024, RoP [47]

³⁵ www.legislation.gov.uk/wsi/2022/670/contents/made

residential course—there might be costs implications and all sorts of sensitive issues. I think, whilst it exists as a mechanism, it's a pretty blunt instrument for doing something that, frankly, it wasn't intended to do ...".³⁶

39. We asked the Member in charge whether he had considered following a more prescriptive approach, whereby an opt-out mechanism would be placed the face of the Bill, instead of relying on the mechanism within section 42 of the 2021 Act. He told us in response:

"... the intention [of the Bill] is that it is mandatory for the provision to be made available, but not all children should be compelled to have to go on that experience. So, in terms of the mechanism [in section 42 of the 2021 Act] itself, I think it's appropriate to use it. It exists already. I think it removes any complication or complexity by shoehorning in another piece of legislation where section 42 delivers what's intended within this.

... section 42 also outlines how this process should work and there's proper records kept of all this as well, which is an important element of ... tracking whether children have had this opportunity presented to them or not, and the reasons why they may not wish to take up the offer. Section 42 already allows for that appropriate track and record keeping to be kept as well, both within the local authority and with the school itself, which perhaps doesn't sit with you as LJC, but is an important part of how, practically, this legislation could be delivered as well."³⁷

40. An official accompanying the Member in charge also stated:

"... the section 42 regulations are already in place, so there wouldn't need to be any further regulations made by the Welsh Ministers in order to give effect to that. That's another reason why we didn't want to potentially confuse the issue by having two powers that would potentially conflict within the curriculum and assessment Act."³⁸

³⁶ LJC Committee, 22 January 2024, RoP [82]

³⁷ LJC Committee, 5 February 2024, RoP [60–61]

³⁸ LJC Committee, 5 February 2024, RoP [62]

Balance between what is on the face of the Bill and what is left to subordinate legislation

41. The Bill comprises 6 sections, and includes:

- one power for the Welsh Ministers to issue a code;
- one power for them to issue guidance; and
- one power for them to issue regulations to make transitional provision.

42. We asked the Minister for his view on the balance between what is on the face of the Bill, and what is left for the Welsh Ministers to determine via subordinate legislation. In response, he told us that he did not believe an appropriate balance was being achieved, and said:

“The purpose of the Bill is to have a mechanism ... to deliver an increase in the provision of residential outdoor education, but then does not go on to define what residential outdoor education is, which I think is a significant weakness. But then, in addition to that, it provides for the code, which has a carte-blanche approach, really, in terms of what Ministers might put in that code, which I think is not proportionate. And the guidance, in a sense, goes a step further, because the guidance includes mandatory provisions where there are no equivalent mandatory provisions in the Bill itself, which is clearly challenging, at least from a scrutiny point of view, and in other ways as well.”³⁹

43. We asked the same question to the Member in charge. He told us that he viewed the balance to be “about right”, although he conceded that “there may be concerns about the ability of the Senedd to scrutinise some of the detail within guidance”. He also told us that he felt the Bill followed the approach of the 2021 Act, in which “lots of the detail is contained within code and guidance.”⁴⁰

The absence of a definition of residential outdoor education

44. The Bill does not include a definition of residential outdoor education on its face. However, at paragraph 20 of the EM, the Member in charge provides the following definition:

³⁹ LJC Committee, 22 January 2024, RoP [26]

⁴⁰ LJC Committee, 5 February 2024, RoP [28]

“Outdoor education residentials encompass a range of activities that take place in a residential setting, involving participants living together in a temporary community away from home. The activities involve being outdoors as a central part of the experience, can have a challenging, adventurous element that often involves some physical activity, always respect the natural environment, and seek to use the outdoor environment as a vehicle for transforming the experience into knowledge, skills, attitudes and behaviours. The activities include recognised sports such as climbing, kayaking, orienteering or sailing, outdoor leisure pursuits such as camping or hill walking, and outdoor activities purposely designed for their educational impact such as rope courses, trails and initiative challenges.”

45. At paragraph 21 of the EM, the Member in charge states that the Welsh Government “may decide” to provide a definition in either or both the statutory code and guidance to be issued under the 2021 Act, as amended by the Bill.

46. As previously referred to, the Minister told us that the absence of a definition on the face of the Bill is a “significant weakness”.⁴¹

47. We asked the Member in charge to explain why the Bill does not include a definition of residential outdoor education on its face. He responded as follows:

“... paragraphs 20 and 21 within the EM set that [definition] out. And it's open to the Minister to deal with the issue when issuing guidance under section 71A of the Bill, as I've outlined. The code could also issue this detail as well, if the Minister desired to have that within the code. ... my intention certainly is not to seek to micromanage and have exact detail for how every experience should be for every single child. So, going back to the Curriculum and Assessment (Wales) Act, following the same spirit of that Act, which is, headteachers, teachers, trusting them to understand and know what's best for the children in front of them; the experience may differ slightly from one class or one school to the other, because that is what is best for them.”⁴²

⁴¹ LJC Committee, 22 January 2024, RoP [26]

⁴² LJC Committee, 5 February 2024, RoP [30]

48. The Member in charge also stated that a number of respondents to the consultation on the Bill’s proposals did not “necessarily” favour the inclusion of a definition of residential outdoor education.⁴³

Our view

49. We note the evidence we have received from both the Member in charge and the Minister in respect of the need for the Bill, its purpose and effect, and the balance between what is on its face and what is left to subordinate legislation.

50. We acknowledge the Member in charge’s statement that the Bill seeks to address deemed deficiencies in the provision of residential outdoor education by seeking to compel the provision of an “offer” of such education to all pupils in maintained schools.

51. We note the Minister’s view that existing regulation-making powers could be used to provide residential outdoor education as a mandatory part of the curriculum, while primary legislation would be required to provide an “offer” of such education. We also note the Minister’s view that guidance may be developed under the 2021 Act to ensure residential outdoor education becomes a “larger feature of the curriculum”.

52. We also note, and acknowledge, the Member in charge’s statement that primary legislation is required to achieve the associated policy intent of section 2 of the Bill, which will impose a duty on the Welsh Ministers to fund the provision of residential outdoor education in line with the Bill’s requirements.

53. We note the Minister’s view that the Bill seeks to make amendments to the 2021 Act which are “not appropriate” as they do not fit within the legislative scheme or the principles of that Act, and by making residential outdoor education a compulsory part of the curriculum it “undermines the flexibility” of that Act.

Conclusion 1. In our view, the effect of the Bill is to make ‘residential outdoor education’ a compulsory part of the curriculum in Wales.

54. We note the Member in charge’s view that existing regulations made under section 42 of the 2021 Act present an opt-out mechanism from the provision of residential outdoor education to pupils. However, we do not believe that those regulations present an appropriate mechanism, for two reasons.

⁴³ LJC Committee, 5 February 2024, RoP [31]

55. First, the 2022 Regulations only provide a temporary mechanism to disapply the curriculum in relation to a pupil: that disapplication can only be made if the relevant circumstances surrounding that pupil are likely to change significantly so that, within 6 months of the date of a disapplication coming into force, it will be appropriate to implement the curriculum for that pupil.

56. Second, in light of the Member in charge's stated intent of the Bill – for there to be a simple “offer” of residential outdoor education provided to all pupils – we do not believe that the 2022 Regulations provide a proportionate mechanism for that “offer” to be declined. Under those Regulations, if a pupil or their parent wishes to request the curriculum to be disapplied temporarily, they will be required to explain the reasons for doing so to a headteacher, to enable the headteacher to decide whether to approve the request.

57. We also note that the Minister views the mechanism provided under section 42 of the 2021 Act as a “blunt instrument” to achieve the policy intent of the Bill.

Conclusion 2. We do not believe that that the Bill as drafted meets the policy intent of the Member in charge in so far as:

- it relies on the regulation-making power within section 42 of the *Curriculum and Assessment (Wales) Act 2021* to seek to deliver that policy intent; and
- the Education (Temporary Exceptions for Individual Pupils and Children) (Wales) Regulations 2022, the existing regulations made in exercise of that power, are not an appropriate means to deliver that policy intent.

Recommendation 1. In order to meet the Member in charge's policy intent and to provide clarity on its face, the Bill should be amended to include a mechanism by which a pupil, or their parent, would be able to opt out from receiving a course of residential outdoor education.

58. We note that there is disagreement between the Member in charge and the Minister as to whether the Bill strikes an appropriate balance between what is on its face, and what is left to subordinate legislation.

59. We acknowledge the Member in charge's view that the Bill follows the approach of the 2021 Act, whereby much detail is contained within statutory codes and guidance issued under that Act.

60. We also note the Member in charge’s statement that he does not wish to “micromanage” educators by including a definition of residential outdoor education on the face of the Bill.

61. However, on this matter we agree with the view of the Minister that the absence of a definition of residential outdoor education on the face of the Bill is a weakness. Since this term is used throughout the Bill, we believe that, in the interests of accessibility of law, a definition ought to be included on its face, which could allow for appropriate interpretation either by educators, or by the Welsh Ministers within the code and guidance issued under the Bill.

Recommendation 2. The Bill should be amended to include a definition of residential outdoor education.

62. We set out our views on particular powers to make subordinate legislation within the next section of the report.

4. Specific observations on particular sections and powers to make subordinate legislation

Section 1(2) – Provision of residential outdoor education

63. Section 1(2) of the Bill inserts new section 64A into the 2021 Act. Subsection (1) of the new section provides that:

“The Welsh Ministers must take all reasonable steps to ensure that a course of residential outdoor education is provided once, free of charge as part of a curriculum, to registered pupils at maintained schools.”

64. In respect of this provision, the Member in charge states in the EM:

“... Ministers can decide how best this should be implemented. It will not necessarily be for the Welsh Government to provide residential outdoor education itself but to take reasonable steps to ensure it is provided.”⁴⁴

65. We asked the Minister to outline what other reasonable steps may be available to the Welsh Ministers to achieve the Bill’s objectives. He told us in response:

“It isn't clear to me, above and beyond providing funding and providing a code and providing guidance [as required by the Bill], what other steps are available to Welsh Ministers to take. We obviously aren't in a position to provide the service directly, so it isn't clear to me that there's anything in addition to that that we could reasonably do, and even those steps don't in fact ensure the provision of that service.”⁴⁵

66. We offered the Member in charge the opportunity to respond to the Minister’s view in respect of this provision. In response, he told us:

“... it's not unusual to have that phrase, 'taking all reasonable steps', within legislation ... if the phrase, 'taking all reasonable steps' wasn't within the Bill ... it would have to put an absolute duty on the Minister to have this provision in place or to make

⁴⁴ EM, paragraph 117

⁴⁵ LJC Committee, 22 January 2024, RoP [29]

sure this is provided, and I think that would be a step too far, quite honestly, an absolute duty, because there will be circumstances where it may not be appropriate for that provision to be there.

... it's ultimately up to the Minister to decide how that's best interpreted and how it's best provided ... beyond that, it would be for the courts to decide whether a Minister has taken all reasonable steps to deliver what's intended in legislation.”⁴⁶

The Residential Outdoor Education Code

67. The 2021 Act requires the Welsh Ministers to issue three codes: the What Matters Code, the Progression Code and the RSE⁴⁷ Code. A curriculum will not comply with the Act unless it accords with these codes.⁴⁸

68. New section 64A(5) of the 2021 Act, to be inserted by the Bill, requires the Welsh Ministers to issue an additional code – the ‘Residential Outdoor Education Code’ (the Code) – which sets out the way in which a curriculum is to provide for residential outdoor education. Subsection (7) provides that a curriculum will not comply with the 2021 Act unless it accords with the Code.

69. Within the statement of policy intent, the Member in charge states that the Code “will assist schools to develop their curriculum and ensure consistency across the country as to the manner in which residential outdoor education is provided.”⁴⁹

70. The Member in charge also provides within the statement of policy intent the following justification for the proposed inclusion of such detail within the Code, rather than on the face of the Bill:

“It is likely that amendments may be required over time to reflect the changing needs of pupils, changes within the residential outdoor education sector, or indeed changes in society.”⁵⁰

71. We asked the Minister for his views on the Bill’s provisions in respect of the Code. He told us in response:

⁴⁶ LJC Committee, 5 February 2024, RoP [38, 40]

⁴⁷ Relationships and Sexuality Education

⁴⁸ Curriculum and Assessment (Wales) Act 2021, sections 6-8

⁴⁹ Statement of policy intent, page 3

⁵⁰ Statement of policy intent, page 3

“The thinking behind that small number of codes, which Ministers are required to publish [under the 2021 Act], is that they deal with issues that are, on the one hand, fundamental, but also of broad application across the curriculum, which is the sort of thing you would expect a code to provide for. ... What this Bill seeks to do is introduce a new code into that, which operates, I think, at a very, very different level from the two types of code that we’ve just been talking about. In a sense, outdoor learning is a subset of the curriculum generally, and residential outdoor centres are a subset of outdoor learning. So, it’s a level of granularity that is very, very far removed from the current arrangements in the Bill. So, I think there’s a tension between the amendments and the existing architecture of the Bill, in that sense.”⁵¹

72. The Minister also highlighted a “secondary issue” arising from this provision:

“... if the Senedd concludes, that a code for something that is this specific, if you like, is appropriate in that legislation, I think it would be a challenge for us to distinguish rationally any future code for an issue that is of similar specificity.”⁵²

73. The Member in charge told us that he disagreed with the Minister’s views, as follows:

“The use of codes is used throughout the Curriculum and Assessment (Wales) Act 2021—the Minister knows that full well. And a specific example is the RSE code, which sets out a huge amount of detail within the Act. It follows the premise of the Act itself. It’s not seeking to do anything unusual or especially different from what currently exists for the new curriculum ...”⁵³

74. The Member in charge also elaborated in respect of this comparison with the RSE Code:

“I don’t want to start ranking one code against the other, or one part of the curriculum against the other. But I think there’s more and more evidence—and in the explanatory memorandum I’ve set out, it shows this—that those outdoor

⁵¹ LJC Committee, 22 January 2024, RoP [31–32]

⁵² LJC Committee, 22 January 2024, RoP [32]

⁵³ LJC Committee, 5 February 2024, RoP [95]

*experiences, residential and just in general, are very important to children's learning and development into young adults."*⁵⁴

75. Under section 76 of the 2021 Act, to be amended by the Bill, the Welsh Ministers will be required to consult on a version of the Code before laying it before the Senedd under the negative procedure. With regard to the application of the negative procedure, in the EM the Member in charge states:

"The negative procedure is appropriate due to the nature of the content of the Code and the requirement on all schools and settings to include it in their curriculum.

*The use of the negative procedure also aligns the Code with the procedure in place for issuing the What Matters Code and the Progression Code which Welsh Ministers are required to issue under the 2021 Act."*⁵⁵

76. The Minister told us that he viewed the requirement to consult on the Code, and the Senedd scrutiny procedure attached to it, to be consistent with existing legislation.⁵⁶

Our view

77. We note the evidence from both the Member in charge and the Minister in respect of section 1(2) of the Bill.

78. In particular, we note the Minister's view that it is unclear what other "reasonable steps", other than those expressly required by the Bill, the Welsh Ministers would be able to take to ensure the provision of residential outdoor education.

79. However, we agree with the Member in charge that this form of words is not unusual within legislation, and are content with its inclusion.

80. We note the Minister's view that the proposal that the Code would sit alongside the three other codes issued under the 2021 Act presents a "level of granularity that is very, very far removed" from current arrangements.

81. We also acknowledge the Member in charge's comments in respect of the deemed importance of the matters which would be anticipated to be set out in

⁵⁴ LJC Committee, 5 February 2024, RoP [98]

⁵⁵ EM, page 62, column 6

⁵⁶ LJC Committee, 22 January 2024, RoP [44]

the Code, set against matters which are set out in other codes issued under the 2021 Act. Such matters relate to curriculum policy and delivery. Given our remit, we are not in a position to offer substantive comment.

82. We note the evidence from both the Member in charge and the Minister in respect of the application of the negative Senedd scrutiny procedure to the Code, and are content.

Section 1(3) – Duty to issue guidance in respect of residential outdoor education

83. Section 1(3) of the Bill inserts new section 71A into the 2021 Act, which requires the Welsh Ministers to issue guidance in respect of the provision of residential outdoor education.

84. In the EM, the Member in charge states that the guidance “will be the main mechanism through which the Welsh Government can set out the detail of how the Bill will be implemented in practice.”⁵⁷

85. In the statement of policy intent the Member in charge provides the following justification for the proposed inclusion of detail within guidance, rather than on the face of the Bill:

“It may be necessary for the Welsh Ministers to amend the guidance to reflect changing circumstances within the education sector or the residential outdoor education sector and therefore it is more appropriate for the details to be included in guidance rather than on the face of the Bill.”⁵⁸

86. In respect of new section 71A, within his written evidence the Minister stated:

“The [existing] section 71 guidance making power [within the 2021 Act] is a power and not a duty i.e. it is discretionary. It is not appropriate to turn the discretionary guidance making power into a mandatory ... guidance making power for the purposes of ROE. If mandatory guidance making was wanted, then it should be a free-standing provision and not linked to section 71. The proposed section 71A would introduce an inconsistency in the approach to guidance making powers in the 2021 Act. It is not clear why ROE guidance is treated

⁵⁷ EM, paragraph 123

⁵⁸ Statement of policy intent, page 4

differently to guidance on other important matters in the new curriculum e.g. RVE, RSE or any of the AoLEs. As it is, the Bill presents a confusing and misleading picture to the reader.”⁵⁹

87. New section 71A(3) sets out what guidance must do, and what it may do. The section, for example, provides that guidance:

- must provide that residential outdoor education is not compulsory for pupils to attend; and
- may set out the age or ages, or school year or school years, at which residential outdoor education is to be provided.

88. The Minister stated in his written evidence that the inclusion of provisions stating what guidance must do was “not appropriate as guidance can only contain advice and not requirements.”⁶⁰ He also stated:

“... it is not advisable to include such restrictions on the Welsh Minister guidance making power. The very nature of guidance making powers is that they are to be used to help those with functions better exercise those functions. In order to do that, the guidance needs to have the scope to evolve over time.”⁶¹

89. In his oral evidence, the Minister told us that the inclusion of this provision was “unusual”. He elaborated:

“... the Bill, as you say, says two things: what could be put in guidance, which is fine, and what is required to be put in guidance. That means that the Bill doesn't propose a system of scrutiny by the Senedd on the guidance. So, you have required elements in the guidance where Ministers will do required things, but it's not part of the Senedd's additional scrutiny process—that's the first thing I would say. That, I would argue, is undesirable.”⁶²

⁵⁹ LJC(6)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education (Wales) Bill, December 2023 paragraph 6.21

⁶⁰ LJC(6)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education (Wales) Bill, December 2023 paragraph 6.23

⁶¹ LJC(6)-03-24, Paper 18 – Evidence Paper – Residential Outdoor Education (Wales) Bill, December 2023 paragraph 6.25

⁶² LJC Committee, 22 January 2024, RoP [47]

90. In response to the Minister’s view, the Member in charge told us:

“As a principle, I certainly see nothing wrong at all with providing guidance and then providing what should be in that guidance—I think that’s completely appropriate within legislation. ...

*I can’t see anything within there [the provisions in respect of what guidance ‘must’ do] that would be omitted from guidance, and I don’t see anything in there that is unreasonable or untoward ...”.*⁶³

91. In subsequent correspondence, the Member in charge provided us with “examples of legislative provisions that compel certain elements to be included in guidance”. The examples provided, from both Acts of the Senedd and of the UK Parliament were of provisions compelling Ministers to issue guidance about specified matters, such as:

- section 2(3)(a) of the *Environmental Protection (Single-use Plastic Products) (Wales) Act 2023* which provides that the Welsh Ministers must prepare and publish guidance about the single-use plastic products that are prohibited under that Act;
- section 9(5) of the *Social Partnership and Public Procurement (Wales) Act 2023* which provides that the Welsh Ministers must issue guidance about the composition of the public procurement subgroup established under that Act; and
- section 134(5) of the *Tertiary Education and Research (Wales) Act 2022* which provides that the Welsh Ministers must publish guidance regarding factors to be taken into account in deciding whether to approve a body or individual for the purposes of that section of the Act.⁶⁴

92. The EM states that the guidance will not be subject to any Senedd scrutiny procedure. Under section 71 of the 2021 Act, the Welsh Ministers will however be required to consult on the guidance before it can be issued.⁶⁵

93. The Minister told us that he was content with the application of no Senedd scrutiny procedure to the guidance.⁶⁶

⁶³ LJC Committee, 5 February 2024, RoP [66]

⁶⁴ [Letter from Sam Rowlands](#), 12 February 2024

⁶⁵ EM, page 63, column 6

⁶⁶ LJC Committee, 22 January 2024, RoP [74]

Guidance must provide that residential outdoor education be provided in Welsh, subject to availability, where requested by a school

94. New section 71A(3)(d) states that guidance must provide that residential outdoor education be provided in Welsh, subject to availability, where requested by a school.

95. The EM states that this provision:

“... is in line with the generally accepted principle that learners should receive education in their preferred language medium of English or Welsh. However, this will be subject to capacity and availability. 23% of pupils learn through the medium of Welsh, although the proportion who reported being able to speak it was 40% and 34% in the 2011 and 2021 censuses respectively. With the exception of the Urdd centres at Glan Llyn and Llangrannog, capacity to deliver outdoor education residential through the medium of Welsh is limited to only a handful of other providers.”⁶⁷

96. We asked the Member in charge whether he considered that tension existed within the drafting of this provision. He told us in response:

“I recognise the blunt language of a piece of legislation perhaps doesn't convey as well as I would like the intention behind that. The reality is at the moment the availability of this provision in Welsh isn't at the level that we need for every school that wants to access it in Welsh. So, I think the legislation is currently reflecting reality in terms of what is available out there. ... whilst the provision isn't available at the moment, there's a journey being undertaken [towards increasing provision] ...”⁶⁸

97. The Member in charge also told us:

“... at the moment, there's nothing within legislation or guidance or anything that says that it should be provided in Welsh. So, this is a million times better than what currently exists, which is that there's nothing in place at the moment that says it should be provided in Welsh. So, I think this does significantly

⁶⁷ EM, paragraph 138

⁶⁸ LJC Committee, 5 February 2024, RoP [75-76]

strengthen the experience that children and young people could and will have.

... as that capacity increases, as it currently is increasing at the moment for provision in Welsh, a Minister could strengthen that guidance to reflect what is able to be delivered. But this is certainly an incentive for more of this provision to be made available in Welsh. At the moment, apart from it being the right thing to do, there isn't a legislative incentive for it to happen."⁶⁹

Our view

98. We note the evidence from both the Member in charge and the Minister in respect of section 1(3) of the Bill.

99. In particular, we note the Member in charge's view, as provided in the statement of policy intent, that it is more appropriate for detail to be included in guidance rather than on the face of the Bill "to reflect changing circumstances within the education sector or the residential outdoor education sector".

100. However, since the Bill as drafted includes prescribed requirements that must be set out in guidance, such as stating that residential outdoor education is not compulsory for pupils to attend, it is unclear to us why it is not appropriate for such provision to be placed on the face of the Bill.

101. We note the Member in charge's opinion that it is appropriate to require the inclusion of specific provision within guidance. We also note the examples he has provided us of provisions that "compel certain elements to be included in guidance".

102. However, we believe the examples provided only set out provisions which require guidance to cover certain topics, for example, single-use plastic products prohibited under the *Environmental Protection (Single-use Plastic Products) (Wales) Act 2023*, rather than provision which include prescribed requirements that must be set out in guidance, for example, that residential outdoor education is not compulsory for pupils to attend.

103. We therefore do not believe that the examples provided by the Member in charge present a relevant comparison with the provisions of the Bill. As we are not aware of any other provisions in legislation which have the same effect as the provisions of the Bill, we are not convinced that their inclusion is appropriate.

⁶⁹ LJC Committee, 5 February 2024, RoP [76, 86]

Recommendation 3. The Bill should be amended to:

- remove the references to prescribed requirements that must be set out in guidance from new section 71A of the *Curriculum and Assessment (Wales) Act 2021*, to be inserted by section 1(3); and
- insert those prescribed requirements, in an appropriate form, into new section 64A of the *Curriculum and Assessment (Wales) Act 2021*, to be inserted by section 1(2).

104. We concur with the Minister’s view that it is not appropriate to turn the existing discretionary guidance-making power within section 71 of the 2021 Act into a mandatory guidance-making power for the purposes of residential outdoor education. We therefore believe that the Member in charge should revisit the drafting of new section 71A(1) of the 2021 Act; in particular if he accepts recommendation 3, as there will no longer be prescribed requirements that must be set out in guidance issued under that section.

Recommendation 4. In light of recommendation 3, the Member in charge should consider whether it is necessary for new section 71A(1) of the 2021 Act to impose a duty on the Welsh Ministers to issue guidance on residential outdoor education. If a duty to issue guidance is deemed to be necessary, such a duty should be included as a standalone provision within the 2021 Act which is not connected to section 71, and the Bill amended accordingly.

105. We note the evidence from the Member in charge in respect of new section 71A(3)(d) of the 2021 Act, as inserted by section 1(3) of the Bill, which requires guidance to provide that residential outdoor education be provided in Welsh, subject to availability, where requested by a school.

106. We acknowledge the Member in charge’s view that there is currently insufficient capacity within the sector to meet the demand for the provision of residential outdoor education in Welsh. We also acknowledge his view that currently there is no provision in legislation or guidance indicating that such education be provided in the language.

107. However, we believe that the caveats included within the provision in the Bill – that residential outdoor education should be provided in Welsh “subject to availability” and “where requested” – could potentially limit its effectiveness.

Recommendation 5. In order to ensure the effectiveness of the Bill’s provisions, the Member in charge should consider whether the Bill should be amended to remove the references to “subject to availability” and “where requested” from new

section 71A(3)(d) of the *Curriculum and Assessment (Wales) Act 2021*, as inserted by section 1(3) of the Bill.

Section 2 – Funding for residential outdoor education

108. Section 2 of the Bill inserts new section 64B into the 2021 Act, which requires the Welsh Ministers to pay a local authority an amount sufficient to enable the provision of residential outdoor education under the Act, as amended by the Bill.

109. The EM provides the following explanation for the inclusion of this requirement in the Bill:

“A consideration throughout the development of the Bill has been to ensure, as far as possible, that any additional costs of the entitlement to residential outdoor education, free of charge to pupils, do not have to be met from local authorities’ or schools’ existing budgets.”⁷⁰

110. We asked the Minister for his view on whether he believed this provision to be appropriate. He told us in response:

“In the financial context that we’re in, creating a new financial requirement and a new duty to fund that is a challenge that goes beyond our ability. It would mean that the money that would come to fund this would come from another element of the education budget, and from somewhere more fundamental at the moment, due to the pressure that’s on people’s budgets.

... the fact that you have a specific requirement to fund something happens in legislation sometimes anyway, but what it does is it creates a funding priority for this element of the budget in future. So the principle isn’t something that we can oppose—it doesn’t happen very often, by the way, that it’s set specifically in that way—but it does tie the hands of Governments in the future, which means that other things in the future will need to be underfunded, and that’s not desirable, not for something of this kind.”⁷¹

⁷⁰ EM, paragraph 145

⁷¹ LJC Committee, 22 January 2024, RoP [55, 57]

111. We also sought a justification from the Member in charge for the inclusion of this provision. He told us that he recognised that it was an “unusual” provision to be included in a Bill, but went on to say:

“... we're just trying to find a way of ensuring first of all that funding is made available for this provision and pointing to the fact that it doesn't have to come from an education pot or an education budget. I think, as Members, we may get frustrated from time to time when we hear Ministers perhaps seemingly working in silos and not considering how what they're delivering is affected by other Government departments, and it strikes me that something like this, residential outdoor education, is likely to have a level of impact on the mental health of our young people by being out and experiencing the great outdoors that we have to offer in Wales—certainly physical health. Neither of those two strict budgets sit within an education budget. There's evidence that residential outdoor education experiences certainly awaken young people to the impacts of climate change and the impact on our environment. So, there's a climate change budget there as well.

It's really a way within legislation of trying to get Governments and Ministers to think of ways this can be funded without it strictly having to come from one pot. I'm certainly willing to hear from the Minister whether he would be willing to commit to this.”⁷²

112. The Member in charge also told us that he was willing to consider “adjusting” or removing the provision “if it is such a troubling area of legislation.”⁷³

Our view

113. We note the evidence from both the Member in charge and the Minister in respect of section 2 of the Bill.

114. In particular, we note the Member in charge’s view that the inclusion of this provision is “unusual”; however, as the Minister states, a specific requirement to fund a specific matter “happens in legislation sometimes”.

⁷² LJC Committee, 5 February 2024, RoP [42-43]

⁷³ LJC Committee, 5 February 2024, RoP [43]

115. Although we do not believe that the inclusion of this provision is constitutionally improper, it raises questions in relation to the financing of policy delivery. However, given our remit, we are not in a position to offer further substantive comment.

Section 5 – Coming into force

116. Section 5 of the Bill provides that sections 1 and 3 will come into force three months after the Bill has received Royal Assent.

117. New sections 64A(6) and 71A(2) of the 2021 Act, as inserted by section 1 of the Bill, provide that the Code and the guidance must be issued within one year of those sections coming into force.

118. The Minister told us that a year is an “unrealistically short period of time” to co-develop a code with interested parties, and to make it subject to “full consultation, development and scrutiny”,⁷⁴ and that it would be “sensible” for this period to be extended.⁷⁵

119. We asked the Member in charge to set out his justification for the timescales provided in the Bill. He told us:

“I appreciate it may feel like a tight timescale, but there's nothing quite like a sense of urgency to get something over the line. It's not an overly complicated ... piece of legislation ... there is a level of legwork [and consultation over a period of 18 months] that's already been undertaken. ...

So, there's a level of awareness out there, a level of eagerness to see this delivered quickly. And I think the lack of complexity within the Bill would enable it to take place within that 15 months. Now, I guess the one to compare it with would be the elements within the RSE code that, I think, were probably more controversial than some of the elements to people in some parts of Wales. I don't expect the same level of controversy over the ability for children to have some time away with their classmates.”⁷⁶

⁷⁴ LJC Committee, 22 January 2024, RoP [34]

⁷⁵ LJC Committee, 22 January 2024, RoP [36]

⁷⁶ LJC Committee, 5 February 2024, RoP [104-105]

Our view

120. We note the evidence from the Member in charge and the Minister in respect of the timescales set by the Bill for the development of the Code and the guidance.

121. We acknowledge the Member in charge's view that there is a "level of eagerness" to develop these aspects in a timely manner. However, in light of the Member in charge's comments that both the Code and the guidance will be fundamental to the effective implementation of the Bill, it would appear to us that a period of a year may be insufficient to ensure that these elements are developed and consulted upon fully ahead of their publication.

Recommendation 6. In light of the Minister's comments, the Member in charge should consider whether the Bill should be amended to extend the date by which the first Residential Outdoor Education Code and guidance must be issued.