

# **LEARNING AND SKILLS (WALES) MEASURE 2009**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Learning and Skills (Wales) Measure 2009 which was passed by the National Assembly for Wales on 17 March 2009 and approved by Her Majesty in Council on 13 May 2009. They have been prepared by the Welsh Assembly Government's Department for Children, Education, Lifelong Learning and Skills to assist understanding of the Measure. They do not form part of the Measure and have not been endorsed by the National Assembly for Wales.
2. The Notes need to be read in conjunction with the Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

### **COMMENTARY ON SECTIONS**

#### **PART 1 Local Curriculum for Pupils in Key Stage 4**

3. This Part of the Measure inserts provisions into Part 7 of the Education Act 2002 (EA 2002). Part 7 concerns the curriculum in maintained schools in Wales. As a result of Part 1 of the Measure, therefore, the curriculum in maintained secondary schools in Wales will be expanded to include the local curriculum entitlements of pupils in Key Stage 4.

#### **Sections 1-3 amend the Education Act 2002**

##### ***Section 1 Interpretation***

4. This section provides additional definitions to those already set out in section 97 EA 2002, and which apply generally for the purposes of that Part. The additional definitions provide the meaning of some of the most important terms used in the provisions inserted by this Measure concerning the local curriculum, namely:
5. "course of study", which is defined by reference to courses approved under section 99 of the Learning and Skills Act 2000. The effect is that, in order for a course of study to be included in any local curriculum formed by a LEA, it must lead to an external qualification approved by the Welsh Ministers under the 2000 Act;
6. "local curriculum" and "local curricula" which are to be construed in accordance with section 116A. When the term "local curriculum" is used in relation to a pupil's school, it means the local curriculum which applies in relation to that school. This caters for the possibility that under section 116A a LEA may form more than one local curriculum, e.g. have different local curricula for schools in different parts of its area;
7. "maintained secondary school", which is defined as a maintained school which is a secondary school but is not a community or foundation special school;
8. "regulations" which are defined as regulations made by the Welsh Ministers;

9. “school”. The definition provides that “school” means, in relation to a pupil, the maintained secondary school at which he or she is a registered pupil.

### ***Section 2 Duty to implement general requirements***

10. This section amends section 100 of the EA 2002. Section 100 operates by reference to section 99 EA 2002 which itself sets out a list of general requirements applicable to the curriculum for a maintained school, e.g. that the curriculum prepares pupils at the school for the opportunities, responsibilities and experiences of later life. Various bodies have functions in relation to the curriculum for a maintained school. Section 100 requires these bodies, such as the Welsh Ministers and local education authorities, to exercise their functions so as to secure that the requirements of section 99 are met. The amendment made by this section to section 100 ensures that the section 99 general requirements also apply in relation to the local curriculum functions created by this Part of the Measure.

### ***Section 3 Basic Curriculum for every maintained school in Wales***

11. This section amends section 101 of the EA 2002. Section 101 lists those forms of education which comprise the basic curriculum for a maintained school in Wales. The amendment provides that a school’s basic curriculum also includes education which satisfies pupils’ local curriculum entitlements.

### **Sections 4-18 insert new provisions into the Education Act 2002**

#### ***Section 4 Formation of the local curricula for pupils in Key Stage 4 (section 116A of the Education Act 2002)***

12. This section provides for the formation in each local education authority area of one or more local curricula for 14-16 year olds (pupils in Key Stage 4).
13. Subsection (1) places a duty on each local education authority to form at least one 14-16 local curriculum for its area.
14. Subsection (2) states that a local curriculum must consist of suitable courses of study falling within the learning domains set out in subsection (3), and selected by the local authority. Under subsection (6), the Welsh Ministers decide by direction which courses of study are suitable for inclusion in local curricula. The local authority will then choose from that list of suitable courses.
15. Subsection (3) describes the learning domains which constitute the categories of each local curriculum.
16. Subsection (4) provides discretion for local authorities to form a local curriculum to meet local needs, subject to regulations which may be made under subsection (5).
17. Subsection (5) makes provision for regulations to be made by the Welsh Ministers as to the formation of a local curriculum, for example to set out the minimum number of courses which must be included in a local curriculum or the minimum proportion of vocational courses of study to be included within a local curriculum.
18. Subsection (6) provides Welsh Ministers with the power to designate a course of study as vocational in nature or “suitable” for the purposes of this section and to specify the particular learning domain into which a course of study falls.
19. Subsection (7) – This allows regulations to provide for different requirements for local curricula in different areas. For example, in some areas there may be a higher minimum number of courses that must be included in local curricula than others.

***Section 5 Local curricula: Welsh language (section 116B of the Education Act 2002)***

20. This section provides that, in exercising their functions in relation to the local curriculum, local education authorities must promote access to and availability of courses of study which are taught in the Welsh language. This will apply, for example, to the authorities when forming local curricula for their area. In the discharge of this duty, local education authorities will also be under a duty to have regard to guidance issued by the Welsh Ministers. The section further imposes a reporting requirement on local education authorities in regard to the exercise of their functions under the section.
21. Subsection (1) requires each local education authority to exercise its functions in relation to local curricula in such a way as to promote access to and availability of courses of study taught through the medium of Welsh.
22. Subsection (2) provides that local education authorities must have regard to any guidance issued by Welsh Ministers in discharging the duty placed upon them under subsection (1)
23. Subsection (3) provides that guidance issued under subsection (2) may be given to an individual authority, to a class of authorities or to all authorities generally.
24. Subsection (4) requires, within two months of the end of the academic year, a local education authority to prepare a report to be submitted to Welsh Ministers. The report must:
  - (a) describe the courses of study within local curricula for that year, to be taught through the medium of Welsh;
  - (b) describe the number of pupils who elected to follow such courses and how many were given an entitlement to do so;
  - (c) explain the authority's plans in subsequent academic years, to give registered pupils of schools maintained by the authority the opportunity to follow courses of study through the medium of Welsh.
25. Subsection (5) defines "academic year" for the purposes of subsection (4) as the period of 12 months beginning on 1 September.

***Section 6 Authorities with more than one local curriculum (section 116C of the Education Act 2002)***

26. This section applies where a local authority forms more than one local curriculum under section 116A of the Education Act 2002 (as inserted by section 4 of this Measure).
27. Subsection (2) requires local education authorities to designate the maintained secondary schools to which each local curriculum applies. Under the provisions described below, the registered pupils of a maintained secondary school then have the right to elect to follow courses of study included within the local curriculum for their school.

***Section 7 Pupils' choices of local curriculum courses (section 116D of the Education Act 2002)***

28. This section begins the process which results in a pupil being entitled to follow courses of study included in the local curriculum applicable to his or her school. Under this section, pupils have the right to make an election to follow a particular course of study. Later provisions determine whether that choice is to be converted into an entitlement to follow the course of study in question.

29. Subsection (1) sets out the rights of pupils to elect to follow, during Key Stage 4, a course or courses from the applicable local curriculum. These rights, however, are subject to regulations made by the Welsh Ministers under subsection (2).
30. Subsection (2) enables regulations to be made which could, for example, specify the maximum number of courses the pupil may choose to elect to follow from the whole local curriculum, identify the number of 'points' that attach to particular courses (and set a maximum number of aggregate 'points' which must not be exceeded by a pupil's selection of courses) and the period during which those choices should be made. It may be necessary to restrict the period during which choices may be made in order that, subsequently, the agencies involved have sufficient time to make the necessary preparations for delivering the chosen courses of study (which could be delivered by a school or institution other than the one attended when choices are made).

### ***Section 8 Pupils' local curriculum entitlements (section 116E of the Education Act 2002)***

31. This section provides that a choice made by a pupil under section 7/116D is an 'in principle' entitlement to follow the chosen course of study. It will become an actual entitlement unless an event provided for under this section occurs.
32. Subsection (1) specifies that a pupil's entitlement ceases if he or she ceases to be a registered pupil of the school, for example if he or she leaves the local education authority area and becomes registered at a school in a different area of Wales or if, before the beginning of the fourth key stage, the head teacher of a pupil's school has decided under section 116F of the EA 2002 that the pupil is not entitled to follow a chosen course of study.
33. Subsection (2) specifies that, where an entitlement to follow a course of study arises, it is for the head teacher to decide when the course of study is to begin.

### ***Section 9 Head teacher's decision as to entitlement (section 116F of the Education Act 2002)***

34. Subsection (1) permits head teachers to decide, on specified grounds, that a pupil is not entitled to follow a particular course or courses of study.
35. Subsection (2) sets out the grounds on which a head teacher may decide that a pupil is not entitled to follow a course of study.

Subsection (3) enables the Welsh Ministers, in regulations, to make provision connected with the making of decisions under subsection (1). For example, provision as to the time or date by which decisions are to be made and the procedure to be followed in such cases, for appeals to the governing body of a school or to another person specified in the regulations, the time or date for determining appeals and the procedure to be followed in connection with determining such appeals

36. Subsection (4) requires the head teacher and the person charged with determining appeals under the regulations, to have regard to any guidance issued by Welsh Ministers about the way in which functions are exercised under this section.
37. Subsection (5) enables Welsh Ministers by Order to change the grounds for disentitlement.

### ***Section 10 Delivery of local curriculum entitlements (section 116G of the Education Act 2002)***

38. This section sets out the duty placed upon a school governing body to deliver local curriculum entitlements during Key Stage 4. The section provides that where a pupil is entitled to follow a course, the course must be made available to the pupil by, or on behalf of, the governing body of his or her school. This means courses of study in the

local curriculum may be offered at a different learning setting to the one at which the pupil is registered.

***Section 11 Head teacher's decision to remove entitlement (section 116H of the Education Act 2002)***

39. Sometimes, it will be necessary to remove a pupil's entitlement to follow a course of study, for health and safety reasons, for example. The grounds on which a head teacher may decide that a pupil will no longer be entitled to follow a course of study are set out in subsection (2).
40. Subsection (3) enables the Welsh Ministers, in regulations, to make further provision connected with the making of decisions under this section including:
  - (a) the decision making procedure;
  - (b) provision for appeals to the governing body of a school or to another person specified in the regulations;
  - (c) provision regarding the effect of a decision pending determination of an appeal ;
  - (d) The procedure to be followed in connection with determining an appeal.
41. Subsection (4) requires the head teacher and the person charged with determining appeals under the regulations to have regard to guidance issued by the Welsh Ministers as to the exercise of functions under this section.
42. Subsection (5) enables Welsh Ministers by Order to change the grounds for disentitlement.

***Section 12 Planning the local curriculum (section 116I of the Education Act 2002)***

43. A local authority's decision as to which courses of study to include within its local curricula under section 116A will be heavily dependent upon local educational capacity. There will be little point in including courses that local schools and Further Education Institutions are not geared up to deliver. Accordingly, this section requires those responsible for delivering 14 to 16 education within a local education authority's area to assist the authority in planning its local curricula.
44. Subsection (1) specifies that the following people must assist the local authority in this regard:
  - (a) the governing body of any maintained secondary school in the authority's area;
  - (b) the head teacher of any such school;
  - (c) the governing body of an institution within the further education sector situated in the authority's area; and
  - (d) the principal of any such further education institution.
45. Subsection (2) defines "planning the local curriculum or curricula" as the process by which a local education authority decides which courses of study to include in a local curriculum or curricula. Subsection (3) provides for the Welsh Ministers to issue guidance and give directions as to the exercise of a person's functions under this section and requires those persons to have regard to the guidance and comply with directions.
46. This section does not prevent plans being made for cross-authority co-operation in the delivery of local curriculum courses, for example the delivery of a course of study by a Further Education Institution on behalf of schools from a different local education authority area to that in which the institution is situated. But any such arrangement will be voluntary and not subject to the duty and central (Welsh Minister) controls provided for in this section.

***Section 13 Delivery of local curriculum entitlements: joint working (Section 116J of the Education Act 2002)***

47. As set out in subsection (1) the objective of this section is to maximise the availability of courses of study included in a local curriculum.
48. Subsections (2) and (4) impose on the local education authority, the governing body of a maintained secondary school and that of a further education institution, a duty to take all reasonable steps to secure the objective of this section.
49. Subsection (3) provides that the duty to take all reasonable steps to secure the objective of the section includes, but is not limited to, a duty to seek to enter into co-operation arrangements where the relevant persons have concluded that it would further the objective of the section to enter into such arrangements.
50. “Co-operation arrangement” is defined in subsection (5) to mean an arrangement whereby any person provides a course of study on behalf of a governing body of a maintained school, or arrangements made under regulations under sections 26 of the Education Act 2002 and 166 of the Education and Inspections Act 2006, which are more formal collaboration arrangements that could include, for example, the establishment of a joint committee.
51. Subsection (6) defines “relevant local curriculum” for the purposes of this section.

***Section 14 Joint working: guidance and directions (section 116K of the Education Act 2002)***

52. This section relates to the joint-working obligations imposed by section 116J. A local education authority, a governing body of a maintained secondary school and the governing body of a further education institution are required to have regard to guidance or comply with directions issued by Welsh Ministers as regards their functions under section 116J.
53. Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 116J. In the case of a direction to enter cooperative arrangements with a party other than a Local Education Authority, school governing body or Further Education Institution governing body, such a direction must not be given without the consent of that party. This will include other organisations providing courses of study which are included in the local curriculum, for example, private training providers or voluntary sector organisations.

***Section 15 Power to amend learning domains (section 116L of the Education Act 2002)***

54. This provision allows Welsh Ministers by order to amend and make other changes to section 116A (3). This would, for example, allow new learning domains to be created.

***Section 16 Application of local curriculum provisions to children who are not registered pupils (section 116M of the Education Act 2002)***

55. This section allows for Welsh Ministers to use regulations to apply the local curriculum provisions to children who are not registered pupils of maintained schools. A definition as to who would fall within this category is provided by subsection (3). The definition catches children of compulsory school age who receive all, or the majority of their education under arrangements made by Further Education Institutions and are not registered pupils of maintained schools.

***Section 17 Application of local curriculum provisions to children who are registered pupils of special schools (section 116N of the Education Act 2002)***

56. This Part of the Measure does not apply in relation to special schools. However, subsection (1) allows for regulations to be made to apply the local curriculum provisions in respect of registered pupils of special schools.
57. Subsection (2) allows for the regulations made under subsection (1) to apply the local curriculum with modifications which may be needed, for example, to take into account the circumstances in which special schools operate.

***Section 18 Local curriculum: directions (section 116O of the Education Act 2002)***

58. This section makes it clear that any direction given by the Welsh Ministers under sections 116A, formation of the local curricula, 116I, planning the local curriculum and 116K, joint working, may be varied or revoked by a further direction.

**Sections 19 and 20 amend the Education Act 2002**

***Section 19 Powers to alter or remove requirements for fourth key stage***

59. This section amends section 107 of the Education Act 2002. Section 107 permits the Welsh Ministers by order to alter or remove requirements for the fourth key stage. This amendment permits the Welsh Ministers to make necessary amendments to the Education Act 2002 as a result of such an order.

***Section 20 Regulations and orders: Procedure***

60. This section amends section 210 of the Education Act 2002 so as to provide for Assembly control of regulations and orders made under the provisions inserted by this Measure into Part 7 of the Education Act 2002. The relevant procedure is the negative resolution procedure in all cases except where an order is made under sections 116F (5), 116H (5) and 116L which, because it would alter primary legislation, is made subject to the affirmative resolution procedure.

**PART 2 LOCAL CURRICULUM FOR STUDENTS AGED 16 TO 18**

61. This Part of the Measure inserts provisions into Part 2 of the Learning and Skills Act 2000. Part 2 of that Act concerns sixth forms and further education in Wales. In most respects, the inserted provisions reflect, with appropriate modifications to reflect the different structure of further education, the provision made in relation to the local curriculum for children aged 14 to 16 by Part 1 of this Measure.

**Sections 21 – 39 amend, in most cases by inserting new sections, the Learning and Skills Act 2000**

***Section 21 Education and training for persons aged 16 to 18***

62. Section 31 of the Learning and Skills Act 2000 imposes general duties upon the Welsh Minister in relation to further education in Wales. This section of the Measure amends section 31 so that those general duties also apply in relation to the local curricula created under the following provisions.

***Section 22 Formation of local curricula for students aged 16 to 18 (section 33A of the Learning and Skills Act 2000)***

63. This section provides for at least one local curriculum for students aged 16 to 18 to be formed for the area of each LEA in Wales.
64. Subsection (1) provides that it is the Welsh Minister's duty to form local curricula under this section. Accordingly, a different approach is taken in relation to 16 to 18 year olds

than is taken under Part 1 of the Measure in relation to 14 to 16 year olds. This is as a consequence of funding responsibilities. The Welsh Ministers are directly responsible for funding further education in Wales and it is therefore appropriate that they form the local curricula. The contents of local curricula will have to be constrained by available resources and it is therefore necessary that the body that controls resources also controls the contents of local curricula.

65. Subsection (2) states that the local curriculum must consist of courses of study falling within the learning domains described in subsection (3) and selected by the Welsh Ministers. The Welsh Ministers, if they see fit, will be able to make arrangements under section 83 of the Government of Wales Act 2006 for a relevant authority to exercise their functions under this section. For example, the Welsh Ministers could make arrangements with a local education authority so that it selected on behalf of the Welsh Ministers the courses of study to be included in the local curriculum for the authority's area.
66. Subsection (3) defines the learning domains which constitute the categories of the local curriculum. These are the same as those for pupils aged 14 to 16 at Key Stage 4 to provide the opportunity for continuity and progression throughout the 14-18 phase of education.
67. Subsection (4) provides that a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides.

***Section 23 Local curricula: Welsh language (section 33B of the Learning and Skills Act 2000)***

68. This section places a duty on Welsh Ministers to promote access to and availability of courses of study taught through the medium of Welsh when exercising their functions in relation to local curricula for students aged 16 to 18.

***Section 24 Areas with more than one local curriculum (section 33C of the Learning and Skills Act 2000)***

69. This section applies where the Welsh Ministers form more than one local curriculum under section 33A.
70. Subsection (2) requires the Welsh Ministers to designate the maintained schools or institutions to which each local curriculum applies.

***Section 25 Determination of a pupil's "relevant school or institution" (section 33D of the Learning and Skills Act 2000)***

71. The 16 to 18 local curriculum provisions operate by reference to the concept of a pupil's "relevant school or institution". The decision as to "relevant school or institution" (the identification of the school or institution from whose local curriculum a pupil is to be entitled to elect to follow courses) is the first stage in the decision-making process that eventually leads to an entitlement to follow a course of study.
72. It is for the head teacher of the school attended by a pupil during Key Stage 4 to decide which is a pupil's relevant school or institution. It may be the school attended during Key Stage 4 (where it has a sixth form) or it may be a different institution for example a Further Education Institution. The identification of the relevant school or institution will depend on which school or institution the head teacher thinks the pupil is likely to attend once s/he ceases to be of compulsory school age. Before arriving at a conclusion, the head teacher will need to consult with the pupil in question as well as any school or institution which the pupil would like to attend. Once a determination has been made as to a pupil's relevant school or institution, then, if the pupil actually attends that school or institution, it becomes responsible, in accordance with the following provisions of this Measure, for delivering 16 to 18 local curriculum entitlements enjoyed by that pupil.



73. Subsection (1) requires head teachers to determine a pupil's relevant school or institution, if a pupil requests such a determination.
74. Subsection (2) defines a pupil's relevant school or institution as one which in the opinion of the head teacher is likely to be responsible for the provision of the majority of the pupil's education once the pupil is over compulsory school age.
75. Subsection (3) enables the Welsh Minister, in regulations, to may make provision as to the making of requests and determinations under this section. For example, provision as to the date or time by which a request or determination is to be made.
76. Subsection (4) expressly provides that this section does not create a duty on any person to admit a pupil to a particular schools or institution.

***Section 26 Pupils' choices of local curriculum courses (section 33E of the Learning and Skills Act 2000)***

77. This section will operate in relation to children in Key Stage 4. It is during that stage that they will need to make choices about the courses they wish to follow when they cease to be of compulsory school age at the end of Key Stage 4.
78. Subsection (1) sets out the rights of pupils to elect to follow a course or courses from the relevant local curriculum for that pupil. These rights may, however, be limited by regulations made by the Welsh Ministers under subsection (3).
79. Subsection (2) sets out the period of time during which any student's entitlement exists. Any entitlement ceases once a person attains the age of nineteen. This does not mean that such a person must cease following a course of study upon attaining nineteen, merely that s/he no longer has an enforceable statutory entitlement to continue to follow the course.
80. Subsection (3) enables regulations to be made by the Welsh Ministers which may, for example, specify the maximum number of courses the pupil may choose from the whole local curriculum, the maximum aggregate 'points' of the courses that may be chosen and the period during which those choices should be made. It may be necessary to restrict the period during which choices may be made in order that, subsequently, the agencies involved have sufficient time to make the necessary preparations for delivering the chosen courses of study (which may be delivered by a school or institution other than the one attended when choices are made).
81. Subsection (4) defines the "relevant local curriculum" for a pupil. It is the local curriculum designated in respect of the pupil's relevant school or institution under section 33C of the Learning and Skills Act 2000 or, where there is a single local curriculum for the LEA in which the pupil's school or institution is situated, that curriculum.

***Section 27 Students' local curriculum entitlements (section 33F of the Learning and Skills Act 2000)***

82. This section provides that a choice made by a student under section 33E of the Learning and Skills Act 2000 (as inserted by the above section of this Measure) is an 'in principle' entitlement to follow the chosen course of study at or under arrangements made by the student's relevant school or institution. It will become an actual entitlement unless an event provided for under this section occurs.
83. Subsection (1) specifies that a student's entitlement ceases if the student's relevant school or institution ceases to be responsible for the majority of his or her education, for example if the student ceases to be a registered pupil of a school before entering its sixth form, or if the head teacher or principal of a student's relevant school or institution decided (before the beginning of the entitlement period) that the student is not entitled to follow a chosen course of study.

84. Subsection (2) specifies that, where an entitlement to follow a course of study arises, it is for the head teacher or principal of the student's relevant school or institution to decide when the course of study is to begin

***Section 28 Head teacher's or principal's decisions as to entitlement (section 33G of the Learning and Skills Act 2000)***

85. It would probably be impossible to establish a system under which all elections to follow courses of study were converted into entitlements. For example, if only a handful of students in a local education authority area chose to follow a particular course it may not be an efficient use of resources to deliver that course. This is why subsection (1) enables head teachers or principals to decide, on specified grounds, that a student is not entitled to follow a particular course or courses of study.
86. Subsection (2) sets out the grounds on which a head teacher or principal may decide that a pupil is not entitled to follow a course of study.
87. Subsection (3) enables the Welsh Ministers in regulations to make provision connected with the making of decisions under subsection (1). For example regulations may provide for:
- (a) the time or date by which decisions are to be made;
  - (b) the procedure to be followed in making decisions.
  - (c) appeals to the governing body of the school or institution or to another person.
  - (d) the time or date for determining appeals
  - (e) the procedure to be followed in connection with determining appeals.
88. Subsection (4) imposes a duty on the head teacher or principal and the person charged with determining appeals under the regulations, to have regard to any guidance given by the Welsh Ministers about the exercise of the person's functions under this section. This could deal with matters such as liaison with other heads or principals (with a view to offering courses of study to students from each other's schools or institutions) before making a decision as to entitlement.
89. Subsection (5) enables Welsh Ministers by Order to amend or remove the existing grounds, add to them, and amend or remove any additions.

***Section 29 Delivery of local curriculum entitlements (section 33H of the Learning and Skills Act 2002)***

90. This section sets out the duty placed upon schools and further education institutions to deliver local curriculum entitlements for students aged 16 to 18.
91. The section provides that the course of study must be made available to a student by, or on behalf of the governing body of his or her relevant school or institution. This means courses of study in a local curriculum may be offered at a different learning setting to a pupil's relevant school or institution, for example a student who attends a school with a sixth form may follow certain courses of study provided at a local Further Education Institution.

***Section 30 Head teacher's or principal's decision to remove entitlement (section 33I of the Learning and Skills Act 2000)***

92. Sometimes, it will be necessary to remove a student's entitlement to follow a course of study, for health and safety reasons, for example.
93. Subsection (1) enables a head teacher or principal to decide, on specified grounds, to remove a student's entitlement.

94. Subsection (2) specifies the grounds on which a head teacher or principal of a student's relevant school or institution may decide to remove a student's entitlement. Those grounds are health and safety and disproportionate expenditure.
95. Subsection (3) enables regulations to be made by the Welsh Ministers connected with the making of decisions under subsection (1) including:
- (a) the decision making procedure;
  - (b) provision for appeals to the governing body of a school or institution or to another person specified in the regulations;
  - (c) provision regarding the effect of a decision pending determination of an appeal;
  - (d) the procedure to be followed in connection with determining an appeal.
96. Subsection (4) requires head teachers and principals and a person charged with determining appeals under the regulations to have regard to any guidance issued by Welsh Ministers about the exercise of functions under this section.
97. Subsection (5) enables Welsh Ministers by Order to amend or remove the existing grounds, add to them, and amend or remove any additions.

***Section 31 Planning the local curriculum (section 33J of the Learning and Skills Act 2000)***

98. The Welsh Ministers' decision as to which courses of study to include within a local curriculum under section 33A of the Learning and Skills Act 2000 will be heavily dependent upon local educational capacity. There will be little point in including courses that local schools and further education institutions are not geared up to deliver.
99. Accordingly, this section requires those responsible for delivering 16 to 18 education to assist the Welsh Ministers in planning the local curriculum or curricula for a particular local education authority area.
100. Subsection (1) specifies that the following people must assist the Welsh Ministers in this regard:
- (a) the local education authority for whose area the particular local curriculum or curricula is to be formed;
  - (b) the governing body and head teacher of any secondary school maintained by that authority;
  - (c) the governing body and principal of an institution within the further education sector situated in that authority's area.
101. Subsection (2) defines "planning the local curriculum or curricula" as the process by which the Welsh Ministers decide which courses of study to include in a local curriculum. Subsection (3) provides for the Welsh Ministers to issue guidance and directions to the bodies specified in subsection (1) in connection with their duty to assist the Welsh Ministers under this section.

***Section 32 Delivery of local curriculum entitlements: joint-working (section 33K of the Learning and Skills Act 2000)***

102. As subsection (1) states, the objective of this section is to maximise the availability of courses of study included in local curricula established under the Learning and Skills Act 2000.
103. Subsections (2) and (4) impose on the local education authority, the governing body of a maintained secondary school and that of a further education institution, a duty to take all reasonable steps to secure the objective of this section.

104. Subsection (3) provides that the duty to take all reasonable steps to secure the objective of the section includes, but is not limited to, a duty to seek to enter into co-operation arrangements where the relevant persons have concluded that it would further the objective of the section to enter into such arrangements.
105. “Co-operation arrangement” is defined in subsection (5) to mean an arrangement whereby any person provides a course of study on behalf of a governing body of a maintained school or of a further education institution, or arrangements made under regulations under sections 26 of the Education Act 2002 and 166 of the Education and Inspections Act 2006, which are more formal collaboration arrangements that could include, for example, the establishment of a joint committee.
106. Subsection (6) defines “relevant local curriculum” for the purposes of this section.

***Section 33 Joint working: guidance and directions (section 33L of the Learning and Skills Act 2000)***

107. This section relates to the joint-working obligations imposed by section 33K.
108. Subsection (1) provides that a local education authority, a governing body of a maintained secondary school and the governing body of a further education institution are required to have regard to guidance issued by Welsh Ministers as to the discharge of their duties under section 33K.
109. Subsection (2) provides that guidance issued under subsection (1) may relate to the contents of co-operation arrangements.
110. Subsection (3) provides that persons mentioned in subsection (1) must comply with any direction given by Welsh Ministers as to the entering into any co-operation arrangement
111. Subsection (4) makes it clear that directions given under this section may require persons to enter into specified co-operation arrangements and may specify the terms upon which such arrangements are to be entered into. In the case of a direction to enter into a co-operation arrangement with a party other than a Local Education Authority, school governing body or Further Education Institution governing body, such a direction must not be given without the consent of that party. This will include other organisations providing courses of study which are included in local curricula, for example, private training providers or voluntary sector organisations.

***Section 34 Power to amend learning domains (section 33M of the Learning and Skills Act 2000)***

112. This provision allows Welsh Ministers to amend section 33A(3). This would, for example, allow new learning domains to be created.

***Section 35 The local curriculum: interpretation (section 33N of the Learning and Skills Act 2000)***

113. This section provides the meaning of various terms used in the provisions inserted in the Learning and Skills Act 2000 by this Measure.

***Section 36 Local curriculum: directions (section 33O of the Learning and Skills Act 2000)***

114. This section makes it clear that any direction given by the Welsh Ministers under sections 33A, formation of the local curricula, 33J, planning the local curriculum and 33L, joint working, may be varied or revoked by a further direction.

***Section 37 Application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties (section 33P of the Learning and Skills Act 2000)***

115. This Part of the Measure does not apply to special schools or further education institutions which wholly or mainly provide education for persons with a learning difficulty. Provision is however made in this section for regulations to be made applying the local curriculum provisions to above compulsory school age registered pupils of special schools or students of institutions which provide education wholly or mainly for persons with a learning difficulty.
116. Subsection (1) enables the making of regulations to apply the local curriculum provisions to the persons who are above compulsory school age and are registered at a maintained special school or who receive the majority of their education at an institution that provides education wholly or mainly for persons with a learning difficulty.
117. Subsection (2) enable regulations made under subsection (1) to apply the local curriculum provisions with any modifications needed to take into account, for example, the circumstances in which these institutions operate.

***Section 38 Application of local curriculum provisions to institutions within the higher education sector (section 33Q of the Learning and Skills Act 2000)***

118. This section provides the Welsh Ministers with a power to make regulations which apply the relevant provisions of the Measure to institutions within the Higher Education sector in Wales in the same way that they apply to institutions within the Further Education sector in Wales. This is to ensure that Higher Education institutions which provide Further Education in Wales can be brought within the scope of the Measure.
119. Subsection (2) provides that the regulations made under this section may apply the same powers and duties which are conferred on principals and governing bodies within the Further Education sector to the equivalent bodies and individuals in the Higher Education sector. Subsection (3) provides that the regulations made under this section may apply the provisions of the Measure to institutions within the Higher Education sector with such modifications that appear to the Welsh Ministers to be necessary or expedient.

***Section 39 Regulation and orders: procedures***

120. This section amends section 152 of the Learning and Skills Act 2000 so as to provide for Assembly control of regulations and orders made under the provisions inserted by this Measure into Part 2 of that Act. The relevant procedure is the negative resolution procedure in all cases except where an order is made under sections 33G(5), 33I(5) or 33M which, because it alters primary legislation, is made subject to the affirmative resolution procedure.

**PART 3 – SERVICES RELATED TO EDUCATION TRAINING AND SKILLS**

***Section 40 Provision of services by maintained schools and further education institutions***

121. Subsection (1) permits the Welsh Ministers to direct the governing bodies of maintained schools and Further Education Institutions to provide or secure “learner support services”. They may also be directed to participate where learner support services are provided by someone else.
122. Subsection (3) gives a broad meaning to the term “learner support services”. Accordingly, a potentially wide range of services may be required to be provided under this section.

*These notes refer to the Learning and Skills (Wales) Measure 2009 (c.1)*

123. Subsection (4) sets out ancillary matters that may be included in a learner support services direction under subsection (1). For example, the directed body may be required to have regard to guidance given by the Welsh Ministers as to the provision of a particular learning support service.
124. Subsection (5) sets out that such a direction may relate to a particular class of young persons, may make different provision for different classes of young persons and may be varied or revoked by a later direction.
125. Subsection (6) provides for impartiality in the provision of advice and information by learning support services. It provides that information must be given in an impartial manner and that advice must be tendered which is considered to promote the best interest of the young person and does not seek to promote the interests or aspirations of any school, institution or other person or body against the best interests of the young person concerned.

#### ***Section 41 Duties of governing bodies***

126. Governing bodies of maintained schools and further education institutions are required to comply with a direction given under section 40.

#### ***Section 42 Amendments to the Learning and Skills Act 2000***

127. This section amends the Learning and Skills Act 2000.
128. The amendments made by this section to section 126 of that Act ensure that the requirements as to the transfer of information, and related matters, imposed upon educational institutions by that section in relation to youth support services also apply in the case of learner support services. For example, if a further education institution were providing learner support services to a registered pupil, the pupil's school could be required to provide (with parental consent) relevant information about the pupil, such as his educational history.
129. The amendments made to section 127 of the Learning and Skills Act 2000 ensure that Her Majesty's Chief Inspector of Education and Training in Wales (Estyn) has the power to arrange for inspections of the provision of learner support services.

#### ***Section 43 The learning pathway document***

130. This section makes provision for each "relevant pupil" or "relevant student" to be provided with a document which records his or her learning pathway. A pupil or student's learning pathway is comprised of the local curriculum courses of study that he or she is entitled to follow under the provisions inserted by Parts 1 or 2 of this Measure together with the learner support services that he is to be provided with under section 37 of this Measure. The record is known as a "learning pathway document". Under this section, it is for head teachers and principals of Further Education Institutions to produce, and keep up to date, learning pathway documents.

#### ***Section 44 Learning pathways: interpretation***

131. This section defines terms used in section 43.

#### ***Section 45 Provision of curriculum information***

132. This section inserts a new section 45B into the Education Act 1997. It permits careers services providers to require schools and Further Education Institutions to provide them with curriculum information.

## **PART 4 – MISCELLANEOUS AND SUPPLEMENTAL**

### ***Section 46 Regulations in connection with the operation of the local curriculum***

133. Currently, education legislation tends to be drafted on the assumption that a child will receive the majority of his or her education at a single site. Under the local curricula formed under Parts 1 and 2 of this Measure, this will often not be the case. For example, a child could receive a significant amount of his or her education at a school other than that at which he or she is registered.
134. The purpose of this section is to allow regulations to be made so that the existing body of education legislation will apply in an appropriate fashion in respect of children who receive education at more than one educational institution. For example, regulations under this section could specify that, for the purposes of legislation governing meetings with a child's parents, the child is to be treated as a registered pupil at more than one school in order that the parents have the right to meet with those responsible for the child's education at both schools.

### ***Section 47 Minor and consequential amendments***

135. This section introduces the Schedule which contains minor and consequential amendments.

### ***Section 48 Orders and regulations***

136. This section provides that any power of the Welsh Ministers to make regulations or an order under the Measure is exercisable by statutory instrument. It also provides that any regulations made under the Measure may be annulled by a resolution of the National Assembly for Wales.

### ***Section 49 Commencement***

137. This provides for the Measure to be brought into force by order of the Welsh Ministers. It permits the Measure to be brought into force at different times for different purposes.

### ***Section 50 Short title***

138. This confers the title of the Measure – the Learning and Skills (Wales) Measure 2009.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

The following table sets out the dates and references for each stage of this Measure's passage through the National Assembly for Wales

Introduced	7 July 2008
Stage 1 – Scrutiny Committee Consideration of proposed Measure	17 July 2008
Stage 1 – Scrutiny Committee Consideration of Evidence	25 September 2008
Stage 1 – Scrutiny Committee Consideration of Evidence	30 September 2008
Stage 1 – Scrutiny Committee Consideration of Evidence	2 October 2008
Stage 1 – Scrutiny Committee Consideration of Evidence	9 October 2008
Stage 1 – Scrutiny Committee	13 October 2008

*These notes refer to the Learning and Skills (Wales) Measure 2009 (c.1)*

Consideration of Evidence	
Stage 1 – Scrutiny Committee Consideration of Evidence	14 October 2008
Stage 1 – Scrutiny Committee Consideration of Outstanding issues	16 October 2008
Stage 1 - Debate	9 December 2008
Stage 2 Scrutiny Committee – Outline of Procedures	14 January 2009
Stage 2 Scrutiny Committee – consideration of amendments	21 January 2009
Stage 2 Scrutiny Committee – consideration of amendments	28 January 2009
Stage 3 Debate	17 March 2009
Stage 4 Debate to Pass the Learning and Skills (Wales) Measure 2009	17 March 2009
Royal Approval in Council	13 May 2009