

LEARNING AND SKILLS (WALES) MEASURE 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 2 LOCAL CURRICULUM FOR STUDENTS AGED 16 TO 18

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 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.

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

- (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.