

**Subordinate Legislation  
Committee  
Y Pwyllgor Is-ddeddfwriaeth**

Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff  
CF99 1NA

Jeff Cuthbert AM  
Chair  
Proposed Learning and Skills (Wales) Measure Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

5 November 2008

Dear Jeff

**PROPOSED LEARNING AND SKILLS (WALES) MEASURE**

**Evidence to the Subordinate Legislation Committee**

Under SO 15.6 (ii), the remit of the Subordinate Legislation Committee allows it to consider “the appropriateness of provisions in proposed Assembly Measures...that grant powers to make subordinate legislation to the Welsh Ministers...”.

The Assembly Government issued a consultation document on 15 January 2008 in relation to its proposed Measure in relation to Learning and Skills. The Committee took evidence from the Deputy Minister (John Griffiths AM) on 8 April 2008.

Following completion of the consultation exercise, the Government introduced its Learning and Skills Measure on 7 July 2008. The Committee received a report from its Legal Advisers which was considered at its meeting on 29 September 2008. The report (and its Annexes) highlighted changes made since the consultation draft previously considered by the Committee. Those changes addressed issues raised at the Committee’s meeting with the Minister.

The report considered at its meeting on 29 September is annexed to this letter.

As the Chair of the Subordinate Legislation Committee I would like to inform you that, having scrutinised the subordinate legislation provisions and the rationale behind the choice of procedure applying to these provisions, the Members had no concerns that they wished to draw to the attention of your Committee.

I would also like to bring to your attention the transcript of the meeting with the Deputy Minister which may inform the work of your Committee:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2/slc20080408qv.pdf?langoption=3&ttl=SLC%283%29-07-08%20%3A%20Transcript%20%28PDF%2C%20143kb%29>

<http://www.cynulliadcymru.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2/slc20080408qv.pdf?langoption=3&ttl=SLC%283%29-07-08%20%3A%20Trawsgriadiad%20%28PDF%2C%20143kb%29>

Yours sincerely,

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

## **Subordinate Legislation Committee**

SLC(3) 20-08 (p7)

**Meeting Date:** 29 September 2008  
**Meeting Time:** 2.30pm  
**Meeting Venue:** Committee Room 2, Senedd

### **Learning and Skills (Wales) Measure (as introduced)**

Paper to the Subordinate Legislation Committee in relation to delegated powers – for consideration by the Committee pursuant to Standing Order 15.6(ii)

#### Purpose

Under Standing Order 15.6(ii) the Committee may consider the appropriateness of provisions in proposed Assembly Measures that grant powers to make subordinate legislation to the Welsh Ministers. This paper outlines the subordinate legislation provisions in the proposed Learning and Skills (Wales) Measure (as introduced) for the Committee's consideration, and highlights the changes made to the proposed Measure as a result of the public consultation.

#### Background

The Assembly Government issued a consultation document on 15 January 2008 in relation to its proposed Measure in relation to Learning and Skills. The Committee took evidence from the Deputy Minister (John Griffiths AM) on 8 April 2008.

Following completion of the consultation exercise, the Government introduced its Learning and Skills Measure on 7 July 2008. The changes made since the version previously considered by the Committee have been summarised by the Members Research Service at Annex A.

The Explanatory Memorandum describes the Measure as follows –

*“This Measure will make law for the education of school pupils and young people in education or training aged 14-19 in Wales. It amends the law for learners in Wales in education and training aged 14-19, set out in the Education Act 2002 and the Learning and Skills Act 2000. It also makes amendments to the Education Act 1997.”*

#### Legislative Competence

The Government has stated that the power to make this Measure is contained in section 93 of the Government of Wales Act 2006 and the Assembly's competence to legislate on this matter is to be found in Matters 5.4, 5.7 and 5.8 in field 5 of Schedule 5 to that Act.

The matters in question are –

*“Matter 5.4*

*Provision about the curriculum in schools maintained by local education authorities.*

*Matter 5.7*

*Provision about entitlement to primary, secondary and further education and to training.*

*Matter 5.8*

*Provision about the provision of services that are intended to encourage, enable or assist people—*

*(a) to participate effectively in education or training,*

*(b) to take advantage of opportunities for employment, or*

*(c) to participate effectively in the life of their communities.”*

The following Matter also appears to be relevant -

*“Matter 5.13*

*Provision for and in connection with securing collaboration -*

*(a) between bodies that conduct institutions concerned with the provision of further education, or*

*(b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,*

*including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.”*

### Subordinate Legislation Powers

Part 1 of the Measure would introduce a Local Curriculum for pupils in Key Stage 4, and that is done entirely by amendments to the Education Act 2002. Part 2 deals with a Local curriculum for students aged 16 to 18 by amending the Learning and Skills Act 2000. Part 3 provides for Services Related to Education, Teaching and Skills, and includes amendments to the Education Act 1997. Part 4 contains various miscellaneous provisions. The result is that most of the 47 sections make amendments to Acts of Parliament, and the subordinate legislation procedures generally follow those in those Acts.

The Government has summarised the proposals in relation to subordinate legislation in Part 5 of the Explanatory Memorandum as follows –

#### ***“5. Power to make subordinate legislation***

*5.1. The Measure contains enabling powers for Welsh Ministers to make provision in regulations about:*

- The formation of the local curriculum, for example, the minimum number of courses to be offered within the local curriculum and the minimum number of those courses that must be vocational;*

- the making of choices of local curriculum courses including, for example, the maximum number of courses a pupil has a right to follow and the period during which choices can be made;*

- the relevant time scales for head teacher’s or principals decisions that a pupil cannot follow a course and more generally in relation to the making of such decisions;*

- *applying the provisions of the Measure to children of compulsory school age who are not registered as pupils of a maintained school but are receiving education within the further education sector in Wales;*
- *applying the provisions of the Measure to children of compulsory school age who are registered as pupils of a maintained special school and to children over compulsory who are students at institutions which provide education wholly or mainly for persons with a learning difficulty;*
- *the determination of a pupils lead learning setting “relevant school or institution” and the making of pupils requests and head teachers or principals decisions, including in particular provision as to the date or time by which a request or decision is to be made.*

*5.2 In addition the Measure enables the Welsh Ministers by order to:*

- *amend the learning domains and*
- *amend the specified grounds on which a head teacher or principal may decide a pupil is not entitled to follow a course or is no longer entitled to follow a course.*

*5.3. In each of the cases detailed above, the rationale for the application of subordinate legislation rests upon the need to avoid excessive detail or to allow for flexibility, within the confines of the principles presented within the Measure itself. As these regulations will contain considerable detail, and will be subject to periodic review and amendment if required, it is held to be more appropriate that they be contained within subordinate legislation than appear on the face of the Measure.*

*5.4. The powers by order to amend the learning domains and the grounds for disentitlement are subject to affirmative procedure in the Assembly, as they would allow amendments to the Measure itself.*

*5.5 All other subordinate legislation to be made under the provisions of the Measure is subject to scrutiny by the National Assembly under the negative procedure. These orders will largely be technical, procedural or will set out detailed arrangements and the negative procedure is considered the most efficient and effective way of effecting such changes with appropriate Assembly scrutiny.”*

The powers to make statutory instruments referred to in the proposed Measure are explained in more detail in the draft Explanatory Notes. Annex B extracts from those notes the sections that relate to the making of subordinate legislation under this Measure.

The principal changes made since the consultation draft considered by the Committee follow a consistent pattern – whereas the draft proposed Measure previously left some provisions to be decided entirely in regulations, the Measure now contains provisions that can be subsequently amended by Welsh Ministers in regulations(see also Annex A of this paper, paragraphs 2- 4):

- Section 8 sets out the grounds on which a head teacher may decide that a pupil is not entitled to follow a course of study, and gives Welsh Ministers the power to amend those grounds. The consultation draft at section 7 required Welsh Ministers to make regulations to specify the grounds from the outset.

- Similar changes apply in section 10 to the grounds on which a head teacher may decide that a pupil will no longer be entitled to follow a course of study, and in the corresponding provisions in Part 2 (sections 26 and 28) .

The provision in relation to the Formulation of Local Curricula for students aged 16 to 18 in section 21 (formerly section 18) has also been changed. The consultation draft provided for regulations to specify the learning domain into which a course of study would fall for the purposes of that section. Greater flexibility is provided by the revised proposal that a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides. These directions would not be subject to any Assembly procedures.

There are also new regulation-making powers at section 16, 23(3), 24 and 35. Details are set out in Annex B below.

### Applicable Procedures

Negative Assembly procedures would apply to all regulations and orders with two exceptions. An affirmative procedure would apply to those statutory instruments that would amend an Act of Parliament, whilst in accordance with normal practice no procedure applies to commencement orders. This includes the powers to amend the learning domains which are provisions of the 2002 Education Act .

For the sake of completeness, powers to give directions or issue guidance (which can sometimes constitute legislation) are included in Annex B, but no Assembly procedure would apply to them.

### Action for the Committee

The Committee is invited to consider whether, and if so how, it wishes to give further consideration to the powers to be granted to Welsh Ministers to make subordinate legislation under this proposed Measure.

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

**29 September 2008**

## **Annex A**

Prepared by the Members Research Service, Assembly Parliamentary Service

### ***Learning and Skills (Wales) Measure***

#### **Revisions made to the proposed Measure post-consultation**

### **Background**

1. The Explanatory Memorandum states that, on the basis of the consultation responses received, the Deputy Minister for Skills revised the proposed Measure prior to its introduction. The key changes are outlined in the Explanatory Memorandum at paragraph 4.2. A summary of these changes together with a description of where they appear in the proposed Measure is provided below.

### **Summary of revisions**

#### *Head teacher's or principal's decision as to entitlement*

2. The Explanatory Memorandum states that whilst there was broad support for Head teachers or Principals to make decisions on entitlement, it was suggested that there should be greater clarity as to the grounds for making such decisions.
3. On the basis of the consultation responses, section 8 (Head teacher's decision as to entitlement) specifies the grounds on which a head teacher may decide that a pupil is not entitled to follow a course of study that the pupil has elected to follow. The section provides for these grounds to be inserted into the Education Act 2002 at section 116E(2). The previous draft proposals left it up to the Welsh Ministers to specify such grounds in regulations.
4. Similarly, section 10 (Head teacher's decision to remove entitlement) specifies the grounds on which a head teacher may decide that a pupil is no longer entitled to follow a course of study that the pupil had previously been entitled to follow. The section provides for these grounds to be inserted into the Education Act 2002 at section 116G(2). The previous draft proposals left it up to the Welsh Ministers to specify such grounds in regulations.

#### *Formation of the local curriculum*

5. The Explanatory Memorandum explains that some respondents expressed concern about the definition of a local area and its implications for the formation of the local curriculum. A number of local authority areas currently organise learning provision within cluster arrangements that take account of local provision and the geography of the area. The Explanatory Memorandum suggests that such cluster arrangements can provide an effective structure for organising local curricula.

6. On this basis, section 4 (Formation of the local curriculum for pupils in Key Stage 4) has been revised and now allows for more than one curriculum per local education authority (LEA). Section 21 (Formation of local curriculum for students aged 16 to 18) is revised in the same way. The draft proposals allowed for only one local curriculum per LEA.
7. The proposed Measure has also been revised to put in place arrangements for where more than one local curriculum exists in a LEA. LEAs must now designate the secondary schools (section 5) and schools or institutions (section 22) to which a local curriculum applies.
8. The Explanatory Memorandum suggests that the flexibility that is provided by the new provision allowing more than one curriculum per LEA means that the power to suspend a local curriculum is no longer required. As such, this power has been removed from the proposed Measure.

#### *Pupils' choices of local curriculum*

9. The Explanatory Memorandum refers to the call from some respondents' for greater clarity of what constitutes a course of study. The proposed Measure has been revised to allow points to be allotted to particular courses and to prevent a pupil from choosing a combination of courses if the aggregate course points exceed a specified limit. This provision is made at sections 6 and 24 (Pupils' choices of local curriculum courses), relating to pupils at Key Stage 4 and students aged 16 to 18, respectively.

#### *Delivery of local curriculum entitlements: joint working*

10. The Explanatory Memorandum states that some respondents identified the need for guidance on the meaning of co-operation. As a result, the definition of co-operation within the Measure has been extended to include more formal 'collaboration arrangements' as set out in the Education Act 2002 (section 26) and the Education and Inspections Act 2006 (section 166). This provision is made at sections 12 and 30 (Delivery of local curriculum entitlements: joint-working), relating to pupils at Key Stage 4 and students aged 16 to 18, respectively.

#### *Identification of local curriculum for the learner*

11. The Explanatory Memorandum refers to concerns expressed by consultees about the need to ensure that there is clarity as to which school or institution is responsible for which pupil. Further clarification is now provided at section 23 (Determination of pupil's "relevant school or institution") of the proposed Measure to identify the school or institution from whose local curriculum a pupil is to be entitled. This section also places a duty on head teachers to determine the relevant school or institution if requested to do so by that pupil.
12. The Explanatory Memorandum suggests that the inclusion of this new provision "draws out the fact that the decision as to 'relevant school or institution' has to be the first stage in the decision making sequence that ultimately leads to the establishment of an entitlement to follow a course of study".



*Provision for pupils of special schools or who having learning difficulties*

13. The Explanatory Memorandum states that some consultation responses queried the application of the proposals to those with special educational needs. The proposed Measure has been revised to make provision for regulations to be made that would allow for the application of the local curriculum provisions to be made to pupils and students with special education al needs.
  
14. Specifically, section 16 (Application of local curriculum provisions to children who are registered pupils of special schools) applies to pupils who are registered pupils of a community or foundation school. Section 35 (Application of local curriculum provisions to children who are registered pupils of special schools or who have learning difficulties) applies to pupils of a community or foundation special school, or to students who receive the majority of their education at an institution which provides education wholly or mainly for those with learning difficulty.

## Annex B

### Extracts from the Explanatory Notes for Learning and Skills (Wales) Measure 2008 (Regulation-making powers are highlighted)

#### PART 1 LOCAL CURRICULUM FOR PUPILS IN KEY STAGE 4

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 4-17 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)

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).

Subsection (1) places a duty on each local education authority to form at least one 14-16 local curriculum for its area.

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.

Subsection (3) describes the learning domains which constitute the categories of each local curriculum.

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).

**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.**

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.

**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 6 Pupils’ choices of local curriculum courses (section 116C of the Education Act 2002)

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.

Subsection (1) sets out the rights of pupils to elect to follow, during Key Stage 4, course or courses from the applicable local curriculum. These rights, however, may be limited by regulations made by the Welsh Ministers under subsection (2).

**Subsection (2) enables regulations to be made which could, for example, specify the maximum number of courses the pupil may choose from the whole local curriculum, identifying the number of 'points' that attach to particular courses and setting 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).

#### Section 8 Head teacher's decision as to entitlement (section 116E of the Education Act 2002)

Subsection (1) permits head teachers to decide that a pupil is not entitled to follow a particular course or courses of study.

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 further provision about the making of decisions under this section.** For example, they may provide that decisions must be taken by a particular date in order that pupils know in good time which courses of study they shall be following during Key Stage 4.

Subsection (4) requires head teachers to have regard to any guidance issued by Welsh Ministers about the way in which head teachers exercise of their functions under this section.

**Subsection (5) enables Welsh Ministers by Order to change the grounds for disentitlement.**

#### Section 10 Head teacher's decision to remove entitlement (section 116G of the Education Act 2002)

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).

**Subsection (3) enables the Welsh Ministers, in regulations, to make further provision about the making of decisions under this section and subsection (4) requires head teachers to have regard to any guidance.**

**Subsection (5) enables Welsh Ministers by Order to amend or remove the existing grounds, add to them, and amend or remove any additions.**

#### Section 11 Planning the local curriculum (section 116H of the Education Act 2002)

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.

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.

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.**

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 Joint working: guidance and directions (section 116J of the Education Act 2002)

This section relates to the joint-working obligations imposed by section 116I. **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 116I.**

Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 116I. 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 14 Power to amend learning domains (section 116K of the Education Act 2002)

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

#### Section 15 Application of local curriculum provisions to children who are not registered pupils (section 116L of the Education Act 2002)

**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 16 application of local curriculum provisions to children who are registered pupils of special schools (section 116M of the Education Act 2002)

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.**

**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 17 Local curriculum: directions (section 116N of the Education Act 2002)

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

Section 18 Powers to alter or remove requirements for fourth key stage

**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 19 Regulations and orders: Procedure

**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 116E, 116G and 116K 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**

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 20 – 36** amend the Learning and Skills Act 2000

Section 21 Formation of local curricula for students aged 16 to 18 (section 33A of the Learning and Skills Act 2000)

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.

Subsection (1) provides that it is the Welsh Minister's duty to form local curricula under this section. ...

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. ...

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.

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

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. 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, that school or institution subsequently becomes responsible, in accordance with the following provisions of this Measure, for delivering 16 to 18 local curriculum entitlements enjoyed by that pupil.

Subsection (1) requires head teachers to determine a pupil's relevant school or institution, if a pupil requests such a determination.

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.

**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.**

### Section 24 Pupils' choices of local curriculum courses (section 33D of the Learning and Skills Act 2000)

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.

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).**

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 entitlement to continue to follow the course.

**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).**

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 33B of the Learning and Skills Act 2000.

Section 26 Head teacher’s or principal’s decisions as to entitlement (section 33F of the Learning and Skills Act 2000)

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 this section permits head teachers or principals to decide that a student is not entitled to follow a particular course or courses of study.

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.

**Regulations under subsection (3) may make further provision about the making of decisions under this section. For example, they may provide that decisions must be taken by a particular time in order that students know in good time which courses of study they shall be following after Key Stage 4.**

**The Welsh Ministers have the power to issue guidance to head teachers and principals about the exercise of their 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.**

**Subsection (5) enables Welsh Ministers by Order to amend or remove the existing grounds, add to them, and amend or remove any additions.**

Section 28 Head teacher’s or principal’s decision to remove entitlement (section 33H of the Learning and Skills Act 2000)

Sometimes, it will be necessary to remove a student’s entitlement to follow a course of study, for health and safety reasons, for example.

Subsection (1) enables a head teacher or principal to decide to remove a student’s entitlement.

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..

**Subsection (3) enables regulations to be made by the Welsh about the making of decisions under this section.**

**Subsection (4) requires head teachers and principals to have regard to any guidance issued by Welsh Ministers about his or her exercise of functions under this section.**

**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 Planning the local curriculum (section 33I of the Learning and Skills Act 2000)

The Welsh Ministers’ decision as to which courses of study to include within a local curriculum under section 33A 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 16 to 18 education to assist the Welsh Ministers in planning the local curriculum or curricula for a particular local education authority area.

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.

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 31 Joint working: guidance and directions (section 33K of the Learning and Skills Act 2000)

This section relates to the joint-working obligations imposed by section 33J. **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 33J.**

**Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 33J.** In the case of a direction to enter co-operation 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 local curricula, for example, private training providers or voluntary sector organisations.

#### Section 32 Power to amend learning domains (section 33L of the Learning and Skills Act 2000)

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

#### Section 34 Local curriculum: directions (section 33N of the Learning and Skills Act 2000)

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

#### Section 35 Application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties (section 33O of the Learning and Skills Act 2000)

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. **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.**

**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 36 Regulation and orders: procedures

**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 33F, 33H or 33L which, because it alters primary legislation, is made subject to the affirmative resolution procedure.**

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

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

#### **Section 43 Regulations in connection with the operation of the local curriculum**

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.

**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 45 Orders and regulations

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 46 Commencement

**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.