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PROPOSED LEARNING AND SKILLS (WALES) MEASURE COMMITTEE

COMMITTEE MEMBERSHIP

Member	Political Party
Jeff Cuthbert (Chair)	Labour
Christine Chapman	Labour
Andrew R T Davies	Welsh Conservative Party
Janet Ryder	Plaid Cymru
Kirsty Williams	Liberal Democrats

SUMMARY OF RECOMMENDATIONS

General principles and the need for legislation

1. We agree with the underlying aim of the proposed Measure – to create rights for learners and to provide broader choice – and we support the need for legislation to drive forward the policy agenda. We outline the evidence for this in the following paragraphs. However, we identify in this report a number of key areas in the proposed Measure which either require amendment at Stage 2 or need to be addressed by the Minister. These are outlined below:

- Grounds for decisions on entitlement, including an appeals process;
- Excluded pupils;
- Consultation when planning local area curricula;
- The duty to consider collaboration;
- Funding structures;
- The use of IT in delivering collaboration;
- Training regulations;
- The ability for pupils with additional learning needs to participate;
- Learner Support Services;
- Welsh-medium provision and the Welsh medium education strategy;
- Impact on faith schools;
- Implementation timescale;
- Assessment of costs – as outlined by the Finance Committee¹.

Andrew R T Davies considered that as currently drafted he was unable to support the general principles of the proposed Measure.

More than one local area curriculum in a local authority area

2. We agree that the option to have more than one curriculum in a local authority area would provide flexibility and is an important aspect of the proposed Measure.

Learning domains

3. We recommend that the Minister issues detailed guidance in addition to the direction making power in relation to the courses that come into each of the learning domains. The Committee strongly believes that the domains must *not* be applied rigidly and must have a degree of flexibility.

4. We fully endorse the drive to achieve parity of esteem between “vocational” and “academic” courses. We agree with the view that if courses are relevant and of high quality then terminology is less of an issue.

¹ Annex F – Finance Committee Report

Minimum number of courses

5. We recommend that learners have the right to study at level one whilst recognising the need to encourage participation in level two courses where appropriate.

6. We agree that the proposed Measure should give the powers to Welsh Ministers to set a minimum number of courses in the local area curriculum and that the minimum number of courses should be available equally in English and Welsh.

7. In addition, we would like clarification from the Minister for Skills on whether the Welsh Baccalaureate and core subjects are included in the minimum number.

Learner choice and grounds for decisions on entitlement

8. We consider that paragraphs (2)(b) and (d) in section 8 could all too easily be used as get-out clauses where there are delays in delivering collaboration. We recommend that the proposed Measure be amended to remove the grounds of “reasonable practicability” and “disproportionate expenditure” in relation to a head teacher’s decision on entitlement to ensure there is pressure for schools and FE institutions to be truly collaborative.

9. We recommend that provision be made in the proposed Measure for an appeals process relating to head teachers’ decisions on entitlement and decisions to remove entitlement with the detail being set out in regulations.

10. Furthermore - any guidance issued in relation to entitlement should make provision for ensuring that pupils have received impartial advice and guidance and a head teacher or principal’s veto should only be used when all other routes have been exhausted.

Maximum number of courses of study

11. We consider any system of points awarded to courses needs to be fair and transparent and we recommend that any regulations setting a maximum number of courses provide sufficient flexibility so as not to restrict pupils who are considered able to follow a more challenging course of study. We recommend that this is monitored and kept under regular review.

Determination of a pupil’s “relevant school or institution”

12. Any guidance issued under the Measure must state clearly the responsibilities for a duty of care for pupils in relation to their welfare and their progress through school (e.g. pupil development, reporting, engagement with parents, pastoral care, examination entries etc.).

Exclusion

13. The Committee is concerned that different rules apply in schools and Further Education institutions in relation to excluded pupils and recommends that the Minister addresses this issue before commencement.

Sections 11 and 29 – Planning the local curriculum

14. We recommend that Welsh Ministers should use their powers to delegate responsibility for planning the local area curricula for 16 to 19 year olds to the local education authorities (LEAs) but that Welsh Ministers retain the power to approve the schemes proposed by LEAs.

The role of key stakeholders in the planning process

15. We recommend that the Minister brings forward amendments at Stage 2 for a statutory duty to consult with the business sector, work-based learning providers and student representatives when planning the local area curricula.

A duty to consider co-operation arrangements

16. Having carefully considered the evidence, we recommend that the Minister brings forward amendments at Stage 2 to strengthen the proposed Measure regarding collaboration. The proposed Measure should place a “duty to collaborate” rather than a “duty to consider collaboration”. Furthermore, amendments will be required to ensure that neither local curricula nor collaboration are restricted by Local Authority boundaries.

17. We also recommend that the proposed Measure should place more accountability on head teachers and principals to achieve a certain level of basic skills amongst pupils rather than just a duty to consider co-operation.

Funding Structures

18. A majority of the Committee recommends the Minister reviews funding structures before commencement. Andrew R T Davies disagreed and considered this issue should be addressed before the proposed Measure proceeds further.

Common timetabling

19. We recommend that any regulations or guidance made under the proposed Measure refer to the need for “harmonised” timetabling rather than “common timetabling”.

Transport

20. We recommend that the Minister clearly outlines how he intends to overcome the limitations on transport that the Learner Travel Measure has created and that amendments are brought forward to this proposed Measure to

ensure that the transport provision and related costs are not a barrier to collaboration and pupil choice. Furthermore, the Minister should state clearly who is responsible for the costs relating to transport provision.

21. We recommend that more research is undertaken to understand the issues and opportunities, including the use of information technology, that may facilitate collaborative working and may help to reduce the need for travel, for example:

- the use of IT and video conferencing;
- mobility of staff rather than pupils; and
- the use of mobile, peripatetic, classrooms.

A majority of the Committee considered this work should be carried out before commencement. Andrew R T Davies disagreed and considered this issue should be addressed before the proposed Measure proceeds further.

Terms, Conditions and Training for Staff

22. We recommend that the Minister considers the provision of training which may be required by teachers and lecturers in relation to joint collaborative working and the provision of courses for the local area curricula.

23. We also recommend that the Welsh Assembly Government brings forward regulations in Wales, similar to the Further Education Teachers' Qualification (England) Regulations 2007 to ensure that further education teachers are able to gain further professional qualifications and enhance the professional development opportunities available to them. A majority of the Committee considered these should be brought forward before commencement. Andrew R T Davies disagreed and considered that the regulations should be brought forward before the proposed Measure proceeds further.

Application of local curriculum provisions in relation to children who are registered pupils of special schools. (Section 16)

24. The Committee is not satisfied that the Minister has given due consideration to the ability for pupils in mainstream education with additional learning needs to participate in the opportunities provided by this proposed Measure. Before commencement, the Minister must clearly identify these opportunities and the support that needs to be available for pupils and parents.

25. We believe that regulations made under Section 16 of the proposed Measure should be subject to the affirmative rather than the negative procedure to allow greater scrutiny by the National Assembly for Wales. We seek clarification from the Minister as to why he considers the negative procedure to be appropriate.

Learner Support Services

26. We believe that support for individuals will be key to the success of the Learning Pathways policy and it is not clear how this will be delivered through the proposed Measure. A majority of the Committee considered that the Minister must bring forward clear proposals in relation to learner support services before commencement. Andrew R T Davies disagreed and considered this issue should be addressed before the proposed Measure proceeds further.

27. In addition we recommend the proposed Measure should be amended to ensure that the needs of the learner are paramount and that any professional providing or delivering learner support services has a statutory duty to demonstrate impartiality.

28. We consider that a statement of intent similar to that included in Clause 80 of the Education and Skills Bill should be included in the proposed Measure in relation to all learner support services, not just careers advice.

Welsh Medium provision

29. We recommend that the Minister brings forward amendments at Stage 2 to make provision on the face of the proposed Measure for learners to have an entitlement to study through the medium of Welsh if they so choose.

30. In light of the evidence on this we recommend that the Government publishes its Welsh Language Education strategy before commencement. This will ensure that the provisions of the Learning and Skills (Wales) Measure for Welsh medium education can be considered in the wider context of Welsh medium education more generally.

Faith schools

31. We recommend the Minister consider further the impact of the proposed Measure on faith schools before commencement.

Commencement

32. We note that the Minister has now set up an implementation group and it is clear that the proposals in the proposed Measure cannot succeed without the will of those involved in delivering it. However, on the basis of the evidence before us currently, we believe the proposed timetable for implementation is unreasonable. Therefore we recommend the Minister reconsiders the timetable for commencement before the proposed Measure proceeds.

33. Since this Committee will conclude its work on the proposed Measure early next year it would seem appropriate for the Enterprise and Learning Committee to monitor progress with implementation if they are able to accommodate this within their work programme.

Financial Implications

34. We note the recommendations made by the Finance Committee and recognise that a number of the issues they raise were also raised in evidence to this Committee. We therefore recommend that these concerns are addressed before commencement.

1. INTRODUCTION

1. The Deputy Minister for Skills (the Minister) introduced the Proposed Learning and Skills (Wales) Measure 2008 on 7 July 2008 and made a statement in plenary the following day. The Proposed Learning and Skills (Wales) Measure Committee was established by a resolution of the National Assembly for Wales on 9 July.

2. The role of the committee is to “consider and report on the general principles of the proposed Measure” (SO 23.23); to conduct scrutiny under Stage 1 of the Assembly’s legislation process.

Committee Approach

3. The Committee consulted widely, issuing an open call for written evidence and taking oral evidence from a range of organisations who will be involved in implementing the arrangements. We received evidence from 23 organisations and individuals and a list of those who contributed to our work is included at Annex A. We have had to conduct our scrutiny in a relatively short time and are grateful to those who gave evidence at short notice. Their contribution, both to our work and the consideration of the proposed Measure, has been invaluable.

4. The evidence we received inevitably reflected the wide range of interests of the respective practitioners involved in planning and delivering learning for the 14-19 year old cohort. In reporting on the proposed Measure we have taken account of the views of each of the distinct groups involved and have sought to reflect the key issues in relation to the content of the Measure, adopting a consensual approach.

5. The Finance Committee and the Subordinate Legislation Committee have also reported on the proposed Measure and their reports are at Annexes F and G.

2. POLICY BACKGROUND

6. The Welsh Assembly Government first outlined its proposals for *Learning Pathways 14 – 19* in 2002. *Learning Pathways* are the learning experiences of each individual learner and involve developing an entitlement for each learner. *Learning Pathways* include a balance of formal learning, wider choice, flexibility and a Learning Core 14-19, together with a blend of support to meet learners' needs.

7. The Welsh Assembly Government's aim is that all young learners will be entitled to a learning pathway framework, which aims to help them achieve their potential. This has six key elements – the first three relate to delivery and the other three to support.

- **Individual learning pathway** including formal, non-formal and informal learning experiences in and outside a learning setting.
- **Wider choice and flexibility from a collaborative options menu** - the option menu for each learner reflects their entitlement to a choice of programmes of study.
- **A Learning Core** providing wider experiences and activities to develop learning, personal and emotional skills.
- **Learning Coach** - all 14-19 year olds are required to have access to learning coach support to assist them in developing their learning skills, making better use of, and developing, their own learning styles; and maximising their own development in a variety of areas of intelligence including emotional intelligence.
- **Access to personal support.**
- **Careers information, advice and guidance.**

8. To help to implement the policy and to provide a strategic approach, the Welsh Assembly Government set up 14 –19 Networks in each Local Authority area. The Networks involve representatives from key stakeholders and were tasked with developing a strategic approach to ensure that all key elements were available for learners of all abilities. The policy was originally delivered through a number of pilot projects.

3. GENERAL PRINCIPLES AND THE NEED FOR LEGISLATION

9. This is the third Committee of the Assembly to report on the general principles of a proposed Assembly Measure and we considered carefully our approach to this work. The Assembly's Standing Orders provide, in Stage 1 consideration, for a degree of scrutiny in committee that does not exist in the scrutiny of Bills in Westminster.

10. We have sought to establish whether the general principles of the particular piece of legislation before us are sound and have taken consideration of the general principles to mean more than a cursory discussion about whether or not a decision to legislate in a broad area of public policy is a valid one.

11. We agree with the underlying aim of the proposed Measure – to create rights for learners and to provide broader choice – and we support the need for legislation to drive forward the policy agenda. We outline the evidence for this in the following paragraphs. However, we identify in this report a number of key areas in the proposed Measure which either require amendment at Stage 2 or need to be addressed by the Minister. These are outlined below:

- **Grounds for decisions on entitlement, including an appeals process;**
- **Excluded pupils;**
- **Consultation when planning local area curricula;**
- **The duty to consider collaboration;**
- **Funding structures;**
- **The use of IT in delivering collaboration;**
- **Training regulations;**
- **The ability for pupils with additional learning needs to participate;**
- **Learner Support Services;**
- **Welsh-medium provision and the Welsh medium education strategy;**
- **Impact on faith schools;**
- **Implementation timescale;**
- **Assessment of costs – as outlined by the Finance Committee².**

Andrew R T Davies considered that as currently drafted he was unable to support the general principles of the proposed Measure.

The need for legislation

12. While the key objective of the proposed Measure, outlined in the Explanatory Memorandum, is to “create a right for learners to elect to follow a course of study from a local area curriculum”³ (an individual learning pathway), the underpinning aim of the learning pathways policy is to raise attainment

² Annex F – Finance Committee Report

³ Explanatory Memorandum Paragraph 3.7 (bullet 3)

levels of an increasing number of learners. CBI Wales⁴ stated that the needs of employers in this regard are clear:

“for young people to leave compulsory full time education literate and numerate....it’s critical too that young people develop softer employability skills (such as team working and problem solving, underpinned by a positive attitude)”

13. Many witnesses both in written and oral evidence supported the need for legislation to take forward the 14-19 learning pathways agenda. There was recognition that although progress had been made it was slow and patchy creating inequalities in provision.

14. Estyn⁵ supported a legislative approach to re-organise 14-19 provision. Recent studies carried out by them identified:

“that not all learners have equal access to a suitable range of options that meet their needs and interests, despite the best efforts of learning networks and some of the providers within their areas.”

They commented that “progress towards adequate 14-19 provision is too slow in many areas.” In providing oral evidence they outlined their view “that it needs the force of statutory legislation to inject some urgency and structure...”⁶

15. Governors Wales⁷ supported the need for a “proper legal framework” and agreed that “widening the choice to include vocational skills should be a right for all learners.” They considered that legislation was necessary to “speed up a process that currently is making slow progress in some areas.”

16. In supporting the need for legislation to re-organise 14-19 provision, Fforwm⁸ referred to the need for equality of provision. They considered that “learners in some parts of Wales face a restricted curriculum” as “many educational establishments are unable to offer a broad range of academic and vocational options.”

17. Coleg Gwent⁹ referred to the impact the legislation might have on re-engaging learners. They made the point that significantly increasing “the range of options for 14-19 learners ...could encourage some learners to remain in learning until they are 18 and could re-engage 14year olds turned off by the current academic school curriculum.”

18. While many supported the need for legislation some considered that legislation was not the only way forward and was only one part of what was needed to ensure effective collaboration and greater choice for pupils.

⁴ Written evidence LS 17

⁵ Written evidence LS 10

⁶ RoP paragraph [6] 2 October 2008

⁷ Written evidence LS 13

⁸ Written evidence LS 12

⁹ Written evidence LS 16

19. ASCL¹⁰ considered that legislation was an expensive option and in itself would not overcome the real barriers to the achievement of the policy objectives. They considered that “statutory guidance and monitoring by Estyn should be quite sufficient to achieve the desired end.” NAHT Cymru¹¹ supported the view that legislation was costly and time consuming. They did not feel that there was a need for legislation at this time and sought “clarification of the evidence that legislation is required.”

20. NAHT Cymru¹² made the point that “Compulsion and collaboration are contradictory.” They referred to the effective collaboration that was taking place already and the benefit of practitioners being signed up to collaborative working on a voluntary basis. They considered there was a danger that “by compelling, you will create an additional set of barriers”. They also warned against seeing “collaborative working as an end in itself, irrespective of the costs and benefits to learners.”¹³

21. UCAC¹⁴ and others referred to the need for more emphasis on “ensuring the quality of courses rather than merely ensuring that a wide range of courses are available”. WJEC¹⁵ saw the proposed Measure as focussing on reorganisation rather than on improving provision. They did not see “that reorganising meets the same objectives as those that an improvement agenda would address.”

22. WJEC¹⁶ also expressed concerns about the focus of the proposed Measure producing unintended consequences. They stated that:

“There are many aspects of detail that need real care, because of the risk of a set of unintended consequences, not least where the effort of a range of people goes, especially education managers within schools and colleges, local authorities, the Welsh Assembly Government and even awarding bodies; there is a real risk that the attention shifts to counting and categorising and away from educational outcomes.”

23. UCAC¹⁷ expressed concerns about the danger of placing too much emphasis on vocational courses and said that “more traditional subjects in the local curriculum must be safeguarded..... [and]....vocational courses are not the only path to work!” They also warned against preparing 14-16 year olds for only one workplace:

“It is better to give pupils of this age a taste of different possibilities but the emphasis for pre-16 year olds should be on education and not training for the workplace.”

¹⁰ Written evidence LS 18

¹¹ Written evidence LS20

¹² RoP paragraph [45] 13 October 2008

¹³ Written evidence LS 20

¹⁴ Written evidence LS 15

¹⁵ RoP paragraph [198] 25 September 2008

¹⁶ Ibid [284]

¹⁷ Written evidence LS 15

This view was supported by ASCL Cymru¹⁸ who said that:

“The curriculum for students of compulsory school age should remain focused on the development of generic skills rather than overly narrow job specific skills.”

24. We recognise the concerns of some that legislation in itself will not necessarily drive collaboration but the evidence we have received suggests that there is a will across the sector to improve attainment levels, increase choice for students and ensure 14-19 provision prepares young people for high skilled employment or higher education.

25. The need for the legislation was summed up by Sir Adrian Webb¹⁹ who stated:

“The measure is essential; it is crucial that we underpin the 14 to 19 pathway policy with a legal structure.”

He went on to say:

“However, you will know as well as I that legislation can only achieve certain things- it certainly will not transform our education system on its own- and there is a huge need for successful implementation. “

26. As outlined above, we consider that on balance the evidence we have received supports the need for legislation as a driver to ensure that more effective collaboration takes place.

¹⁸ Written evidence LS 18

¹⁹ RoP paragraphs [11 & 12] 4 November 2008

SPECIFIC COMMENTS ON PROVISIONS

Formation of local curricula (Sections 4 & 5 for pupils in Key Stage 4- Sections 21& 22 for students aged 16 to 18)

27. Sections 4 & 21 make provision for the formation of local curricula by amending the relevant UK Acts. In the case of Key Stage 4 pupils the amendments relate to the Education Act 2002 and for students aged 16 to 18 the Learning and Skills Act 2000.

28. The amendments allow more than one local curricula within each local education authority. Formation of the local curricula lies with local education authorities for Key Stage 4 pupils and with Welsh Ministers for 16 to 18 year olds. Those bodies must also designate which curriculum applies to individual schools or FE institutions (sections 5 & 22).

29. Courses of study within a local curriculum must consist of courses within the “learning domains”. The learning domains are:

- mathematics, science and technology;
- business, administration and law;
- services for people;
- arts, media, culture and languages;
- humanities, social sciences and preparation for life and work.

These sections also allow Welsh Ministers to make regulations requiring a minimum number of courses to be included in a local curriculum or a particular learning domain. Regulations can also specify a minimum proportion or number of vocational courses that must be included.

More than one Local Area Curriculum in a local authority area

30. The original legislative proposal had only made provision for one local area curriculum in each local authority area but the draft proposed Measure was amended to allow the formation of more than one if appropriate for the area. This amendment was widely welcomed in the evidence we received and seen as providing flexibility and improving learner choice.

31. We agree that the option to have more than one curriculum in a local authority area would provide flexibility and is an important aspect of the proposed Measure.

Learning Domains

32. There was agreement that the proposed domains were described reasonably accurately and were appropriate. There was some discussion as to whether the individual Learning Domains were broad enough, whether they were of unequal sizes and whether courses could fall into more than one domain.

33. Witnesses however felt strongly that detailed guidance listing which courses might come within each Learning Domain was urgently needed from the Welsh Assembly Government.

34. There was also discussion about the terminology associated with courses particularly the use of the terms “vocational” and “academic”.

35. Some witnesses said that agreeing new terminology was essential in order to help to achieve parity of esteem between different types of courses.

36. Other witnesses argued that it was the quality of the courses that mattered and that the terminology was less important in promoting parity of esteem. Sir Adrian Webb²⁰ said:

“My view about the whole issue of this kind of terminology is that, frankly, words, although they seem terribly important, are not. Some people would say, 'Do not use the word "vocational"; use some other word'. If you use some other word and the vocational programmes are not good, that word will be just as devalued as some people see 'vocational' as being devalued at present.”

37. We noted that some courses wouldn't fit neatly into the five proposed Learning Domains, or may come into two domains, but accepted the evidence that, on balance, the proposed learning domains are fit for purpose.

38. We recommend that the Minister issues detailed guidance in addition to the direction making power in relation to the courses that come into each of the learning domains. The Committee strongly believes that the domains must *not* be applied rigidly and must have a degree of flexibility.

39. We fully endorse the drive to achieve parity of esteem between “vocational” and “academic” courses. We agree with the view that if courses are relevant and of high quality then terminology is less of an issue.

Minimum number of courses

40. There was widespread support for the introduction of a minimum number of courses and agreement that it would provide, and help to safeguard learner choice.

41. In their oral evidence, the WJEC²¹ said:

“We see the minimum number concept as being a way of guaranteeing a certain amount of choice, which may well be necessary. . . On defining the minimum number, while the concept might be a worthy one, there are interesting issues about how it is defined.”

²⁰ RoP paragraph [115] 4 November 2008

²¹ RoP paragraph [236] 25 September 2008

42. This reflected the views of many witnesses. Most of the comments and concerns were about the practical issues of introducing the minimum number of courses in the proposed timescale.

43. In response to Members' and witnesses' concerns, the Minister provided the Committee with two papers which provided details about the minimum number of courses that had been agreed by the 14 - 19 Learning Pathways co-ordinators in each local authority area and the timescales agreed for introducing the minimum number of courses in each area. The relevant paper is at Annex C.

44. The Committee also heard repeated concerns that it would be much harder in rural areas to deliver the minimum number of courses. There were significant worries that those in rural areas would not have equality of opportunity to access the courses of their choice.

45. There were also concerns about the counting of Welsh medium courses towards the minimum entitlement: WJEC²² stated:

“We also have major issues with the view, from some quarters, that Welsh-medium delivery counts as an additional choice to English-medium delivery, as, again, that is only one choice for the young person. In no way do we want the situation of people claiming to be delivering a wider range of options because they are delivering in two languages. For any one young person, that is still only one choice, because no young person would choose both Welsh and English-medium education.”

46. The Minister provided further information on this in the paper for the Committee²³ and confirmed that:

“It is the policy intention that where Welsh Medium provision exists that the full minimum entitlement of 30 courses, should be available through the medium of Welsh by full roll out in 2012. In this regard Welsh medium schools will fall under the relevant local authority banding arrangements and will progress toward the 30 course minimum entitlement at the same rate as English medium schools in the area from 2009.”

47. The Committee also heard concerns about the *level* of the courses that would count towards the minimum entitlement. For example GCSEs can be achieved at either level one (grades D and E) or level two (grades A-C), and many vocational courses are offered at level one. There were concerns that if level one courses did not count towards the minimum entitlement, then they may not be given any priority by the provider and could restrict the number of courses available at level one for learners.

48. In response to these concerns, the Minister²⁴ told the Committee that level one courses would count towards the minimum entitlement if a level two course

²² RoP paragraph [239] 25 September 2008

²³ Annex C, correspondence from the Minister

²⁴ RoP paragraph [76] 14 October 2008

in the same subject wasn't available. He also explained that he was trying to achieve a reasonable balance between encouraging learners to be ambitious, by ensuring that they have the opportunity to access the higher level courses, whilst still ensuring that the level one courses were available for those for whom this is the most appropriate level.

49. We recommend that learners have the right to study at level one whilst recognising the need to encourage participation in level two courses where appropriate.

50. We agree that the proposed Measure should give the powers to Welsh Ministers to set a minimum number of courses in the local area curriculum and that the minimum number of courses should be available equally in English and Welsh.

51. In addition, we would like clarification from the Minister for Skills on whether the Welsh Baccalaureate and core subjects are included in the minimum number.

Entitlements to study (Sections 6-10 for Key Stage 4 and sections 23–28 for 16-18 year olds)

52. These sections set out the key policy behind the proposed Measure, providing the right for a pupil to elect to follow a course or courses of study – creating an individual learning pathway. They also make provision for a head teacher or principal to decide and/or remove a pupil’s entitlement on specific grounds. The grounds for an initial decision on entitlement relate to:

- lack of suitability based on educational attainment;
- reasonable practicability;
- travelling time;
- disproportionate expenditure;
- health and safety.

53. A decision to remove entitlement can only be made in relation to health and safety and disproportionate expenditure. Regard must be given by head teachers and principals to any guidance issued by Welsh Ministers regarding decisions on entitlement and Welsh Ministers can change the grounds in future if they wish.

54. Under these sections Welsh Ministers may make regulations setting a maximum number of courses of a particular type that a pupil can follow and introduce a system of allocation of points to courses to set a maxima for study.

55. Section 23 requires head teachers to determine a pupil’s relevant school or institution for key stage 4 pupils (at the pupil’s request).

Learner choice and grounds for decisions on entitlement

56. There was strong support in the evidence to the Committee for the general principle of providing learner choice. There was a general view that head teachers and principals should be given responsibility for considering the course of every learner’s education. While the provisions in the proposed Measure should provide a wider choice for the majority of students it is reasonable for the provisions on entitlement to aim to prevent learners making unwise choices.

57. Many witnesses welcomed the inclusion of specific grounds for decisions on entitlement (which were not present in the draft Measure) but some expressed concern over the inclusion of “reasonable practicability” and “disproportionate expenditure” in section 8(2). Sir Adrian Webb²⁵ asserted that paragraphs 8 (2) (b) and (d) in section 8 should be removed or at least applied only in exceptional circumstances. They should not be used as a “get-out clause”. His view was that:

“Entitlement should drive that collaboration and that range of choice and the cost-effectiveness of that range of choice. I do not think that you should limit entitlement because people have not started collaborating.”

²⁵ RoP paragraphs [121 - 123] 4 November 2008

58. In commenting on the grounds for refusing entitlement Construction Skills in Wales²⁶ considered that “funding should not be a barrier” to pupil entitlement and added that “funding should be addressed so that it is not a factor in allowing pupils to study”.

59. Careers Wales²⁷ added that head teachers and college leaders need to use their powers of veto “sparingly”. Whilst acknowledging that learners may not always make the best choices they considered the problem was “best overcome through the route of impartial advice and guidance with the negative decision only being made when all other routes have been exhausted.” They did not consider that the proposed Measure provided sufficient safeguards in this regard.

60. We received evidence²⁸ in support of provision for an appeals process to avoid litigation being the only avenue available to pupils or parents who disagree with a decision on entitlement or removal of entitlement. It was suggested that existing appeals mechanisms through governing bodies may be a suitable way forward and would not be too bureaucratic. Governors Wales²⁹ supported the inclusion of an appeals process on the face of the Measure.

61. The Minister highlighted the importance of a consistent approach with regard to entitlement and said he would be issuing guidance to head teachers and principals to ensure the criteria were defined. He considered that the specific grounds for exclusion set out in the proposed Measure allowed for decisions to be based on “local circumstances and autonomy”.³⁰ He did not consider the grounds of “reasonable practicability” and “disproportionate expenditure” should be removed from the proposed Measure.

62. In relation to appeals on entitlement he agreed that there was a need for an appeals mechanism and that the process should be set out clearly. He considered that this “could be done through guidance but was open to other suggestions for handling appeals.”³¹

63. We consider that paragraphs (2)(b) and (d) in section 8 could all too easily be used as get-out clauses where there are delays in delivering collaboration. We recommend that the proposed Measure be amended to remove the grounds of “reasonable practicability” and “disproportionate expenditure” in relation to a head teacher’s decision on entitlement to ensure there is pressure for schools and FE institutions to be truly collaborative.

64. We recommend that provision be made in the proposed Measure for an appeals process relating to head teachers’ decisions on entitlement

²⁶ Written evidence LS 3

²⁷ Written evidence LS 21

²⁸ Written evidence LS 17; RoP paragraphs [65, 288] 25 September 2005; RoP paragraph [127] 13 October 2008

²⁹ RoP paragraph [65] 25 September 2005

³⁰ RoP paragraph [28] 13 November 2008

³¹ Ibid. paragraph [32]

and decisions to remove entitlement with the detail being set out in regulations.

65. Furthermore - any guidance issued in relation to entitlement should make provision for ensuring that pupils have received impartial advice and guidance and a head teacher or principal's veto should only be used when all other routes have been exhausted.

Maximum number of courses of study

66. The proposal to set a minimum number of courses was universally welcomed and further detail on this is included earlier in this report. However there were some concerns about setting a maximum number of courses (through a points system) for individual students. WJEC³² noted that a maximum number of courses ensures "that no individual demands more than their share of resources" but questioned "whether it constrains in any way our ability to respond to gifted individuals."

67 We consider any system of points awarded to courses needs to be fair and transparent and we recommend that any regulations setting a maximum number of courses provide sufficient flexibility so as not to restrict pupils who are considered able to follow a more challenging course of study. We recommend that this is monitored and kept under regular review.

Determination of a pupil's "relevant school or institution"

68. Whilst the proposed Measure does provide for head teachers to determine a pupil's "relevant school or institution" once they cease to be of compulsory school age, some concern was expressed about where responsibility for pupils would lie during Key Stage 4. We are concerned that if pupils are to receive education on more than one site some vulnerable pupils may be further disadvantaged and slip through the net. It could be quite challenging physically for some younger pupils to organise themselves and their time to ensure they get to where they need to be and there is a danger that some could disappear from the system. Governors Wales³³ suggested that the proposed Measure would benefit from "greater clarity to ensure that students are where they should be and are being cared for." There is also a need for clarity regarding responsibilities for pupil development, reporting, engagement with parents, pastoral care, examination entries and so on.

69. Any guidance issued under the Measure must state clearly the responsibilities for a duty of care for pupils in relation to their welfare and their progress through school (e.g. pupil development, reporting, engagement with parents, pastoral care, examination entries etc.).

³² RoP paragraph [236] 25 September 2008

³³ RoP paragraph [74] 25 September 2008

Exclusion

70. Whilst not directly relevant to this section we have also discussed with witnesses the different rules that apply to schools and FE institutions regarding the formal exclusion of a pupil. There was some suggestion that this was an area which would need to be reviewed. It was not clear what would happen if a pupil were excluded by one institution only. Further thought needs to be given to the impact of the rules on exclusion on both pupils and teachers in the light of pupils following courses of study at more than one institution. UCAC³⁴ said:

“With regard to excluded pupils, the arrangements are probably inadequate. . . We have recently heard the Children’s Commissioner for Wales speaking about exclusions, unofficial exclusions, and other such problems. I do not think that this Measure goes far enough in dealing with all of those problems.”

ASCL³⁵ commented:

“Again, it comes back to questions of consistency. If you are going to encourage cooperation, how will you ensure that you are singing from the same sheet about how you treat excluded pupils, deal with behavioural problems, and so on? Much more work will need to be done on that—nationally, at this level, but also locally—in order to have clear guidance on how the institutions will co-operate and what sort of policies they are going to adopt.”

71. The Minister acknowledged that different rules apply to schools and FE institutions but did not anticipate there being any changes needed to either set of rules as a result of the provisions in the proposed Measure.

72. The Committee is concerned that different rules apply in schools and Further Education institutions in relation to excluded pupils and recommends that the Minister addresses this issue before commencement.

³⁴ RoP paragraph [138] 30 September 2008

³⁵ Ibid paragraph [141]

Joint Working (Sections 11-13 for Key Stage 4 and sections 29-31 for 16-18 year olds)

Sections 11 and 29 – Planning the local curriculum

73. Sections 11 and 29 make provision for the planning of the local curriculum by amending the Education Act 2002 and the Learning and Skills Act 2000. Responsibility for planning the curriculum for 14-16 year olds rests with local education authorities and for 16-18 year olds with Welsh Ministers (with assistance from the relevant LEA). In both cases the proposed Measure sets out those persons who must assist the local education authority and Welsh Ministers in planning the local curriculum or curricula. These are the governing bodies head teachers and principals of maintained secondary schools and further education institutions within its area. These sections also make provision for regard to be given to any guidance issued by Welsh Ministers in relation to curriculum planning.

74. Overall there was strong support in both the oral and written evidence for the principle of the formation of local area curricula and most comments concentrated on the details of establishing and planning local area curricula. WJEC³⁶ commented:

“We certainly feel that the concept of a local curriculum is an important one, but we would see a strong local curriculum as one that delivers high-quality pathways that are relevant locally and which support wider aspirations.”

75. The witnesses recognised that separating the lead responsibility for the formation of the local area curricula between local education authorities for Key Stage 4 pupils and with Welsh Ministers for 16 to 18 year olds reflected the current responsibilities.

76. However there was widespread support *for the principle* of a single body being given responsibility for planning local area curricula from 14 to 19 years. Governors Wales³⁷ supported this view:

“It makes sense, on the face of it, at any rate, for the planning for both age groups to be done by the same body, rather than for the 16 to 19 age group to be done centrally, as it were . . . It is as simple as that really. That was the basis of our evidence—to simply put the two together. . . it is a matter of having a single body at local level that has the final responsibility.”

77. Nevertheless there was also widespread recognition that giving the lead responsibility to a single organisation for the formation of a local area curricula for 14 to 19 year olds would create significant practical challenges.

78. If the lead responsibility were passed to the local authorities, it was recognised that they would provide an element of local accountability and they

³⁶ RoP paragraph [200] 25 September 2008

³⁷ Ibid paragraph [31]

already have responsibility for planning provision for 14 to 16 year olds. But there was concern that some of the smaller local authorities might struggle to find capacity and there was a suggestion that, in some areas, clusters of local authorities with the lead responsibility for an area might be a practical solution. There was also recognition that the local authorities would have to work in close co-operation with the Further Education colleges. Again, Governors Wales³⁸ said:

“it is a matter of having a single body at local level that has the final responsibility. The legislation as drafted allows for that responsibility to be delegated. Obviously, it would need to be done in a co-operative way—it is not a matter of going back to the old days when FE was under the direct control of the LEAs; it is not that at all, and hopefully colleges would not fear that.”

79. Some witnesses referred to the role of the 14-19 Learning Networks and suggested that they take greater responsibility for the planning of the curricula and provision. Other witnesses cited the consortia system that was proposed by Sir Adrian Webb in *Promise and Performance, (the Webb Review)*³⁹ and suggested that responsibility for planning could be delegated to a local consortia. In their oral evidence, Estyn⁴⁰ said:

“It is really one of the trickiest issues in all of this. I think that the logic of local authorities managing the provision for 14 to 16-year-olds is clear. Realistically, they need to be the people who are taking the lead role in planning that. On provision for 16 to 19-year-olds, a lot will depend on what it actually means in practice to have Ministers controlling or taking the lead in developing that area, as it is currently put.”

80. Estyn⁴¹ referred to the current proposals for collaborative working for learners age 16 to 19 under the Welsh Assembly Government’s *Transforming Education and Training* policy:

“However, I think that it is important that somebody provides a clear lead and is accountable for all co-ordination at the 16-19 stage. It is currently noted that Ministers have that responsibility, but how it will be delegated in practice and actioned at a local level are key to a lot of this.”

81. Overall, although many witnesses would ideally like to see a single body responsible for smooth transitional planning for age 14 to 19 years, there was recognition that the planning arrangements proposed in the Measure had an inevitability because of the current responsibilities and particularly because of the two current funding systems.

82. In his evidence to the Committee, the Minister⁴² said:

³⁸ RoP paragraph [31] 25 September 2008

³⁹ [Promise and Performance, \(the Webb Review\)](#), Welsh Assembly Government website

⁴⁰ RoP paragraph [41] 2 October 2008

⁴¹ [Transforming Education and Training Provision in Wales - Delivering Skills that Work for Wales](#), Welsh Assembly Government website

“At the moment, the law is such that responsibility rests with the LEAs for those of compulsory school age, while the responsibility for 16 to 18-year-olds who are in colleges and school sixth forms rests with Welsh Ministers. We could consider having a more unified approach. I am not aware of our having given serious thought to that sort of delegation. We are confident that, in the partnership that has developed thus far between the key stakeholders and us as a Welsh Assembly Government, we are able to knit everything together adequately and properly and to take this agenda forward with the sort of consistent approach right across Wales that will produce the required benefits. We are open to ideas, as we have been through the process of developing 14 to 19 learning pathways, and there have been changes along the way when views have been expressed that we have found compelling. We will consider all of the evidence that is given throughout this process.”

83. We agree with the view that it is logical for there to be one overarching body with overall planning responsibility for provision for learners aged 14 to 19 years. We recognise that the arrangements proposed in the Measure reflect the current responsibilities.

84. We recommend that Welsh Ministers should use their powers to delegate responsibility for planning the local area curricula for 16 to 19 year olds to the local education authorities (LEAs) but that Welsh Ministers retain the power to approve the schemes proposed by LEAs.

The role of key stakeholders in the planning process

85. Several witnesses suggested that key stakeholders, other than those already proposed by the Measure, should have a legislative role in planning the local area curricula. The National Union of Students suggested that there should be representation of the learners in the planning process⁴³.

86. The National Training Federation Wales⁴⁴ also argued strongly that the representatives of work-based providers should be included in the legislative role for the formation of the curricula and should have a key role in the delivery of the provision.

87. Representatives of the Sector Skills Councils⁴⁵ suggested that they would have a valuable role in the planning process.

88. In response, the Minister⁴⁶ said that many key stakeholders were involved through the 14-19 Learning Network partnerships including further education colleges, private training providers, the voluntary sector, local authorities, head teachers, governing bodies and the business sector.

⁴² RoP paragraph [47] 14 October 2008

⁴³ RoP paragraph [298-299] 25 September 2008

⁴⁴ Written evidence LS 5

⁴⁵ Written evidence LS 11

⁴⁶ Committee paper LS(3)-07-08(p.1) 13 October 2008

89. We recommend that the Minister brings forward amendments at Stage 2 for a statutory duty to consult with the business sector, work-based learning providers and student representatives when planning the local area curricula.

Sections 12, 13, 30 & 31 – Delivery of local curriculum entitlements: joint working

90. In order to maximise the availability of courses of study included in a local curriculum these sections make amendments to the relevant UK Acts and place a duty on governing bodies of maintained schools to ‘consider co-operation arrangements’ and where they conclude that entering into co-operation arrangements would deliver maximum availability of courses must ‘seek to do so’. ‘Co-operation arrangements’ means an arrangement whereby another body provides a course of study on behalf of a governing body of a maintained school. The relevant LEA also has a duty to consider whether they should make arrangements on behalf of governing bodies to maximise the availability of courses.

91. Where a governing body makes a proposal to a further education institution regarding co-operation this section requires the governing body of the relevant institution to consider the proposal.

92. Provision is also made for regard to be given to any guidance or directions made under these sections.

A duty to consider co-operation arrangements

93. The “duty to consider co-operation” had been strengthened in comparison to the original draft Measure but the Committee heard a number of differing views on whether the proposed Measure should be strengthened even further to promote collaboration.

94. Some witnesses, for example the National Union of Teachers Cymru⁴⁷ and Governors Wales⁴⁸ agreed that the duty *to consider* collaboration was strong enough and that there could be genuine local barriers, which ultimately did prevent local collaboration.

95. UCAC⁴⁹ suggested that the role of the local authorities to promote collaboration, in both schools and further education colleges, could be strengthened.

96. Several witnesses, including the Welsh Local Government Association⁵⁰, recognised that local authority boundaries should not act as an impediment to collaborative working :

⁴⁷ RoP paragraph [55] 30 September 2008

⁴⁸ RoP paragraph [84-85] 25 September 2008

⁴⁹ RoP paragraph [60] 30 September 2008

⁵⁰ RoP paragraph [212] 2 October 2008

“I think that there is a commitment on the part of local government to transcend these boundaries.”

97. Sir Adrian Webb⁵¹ suggested that the proposed Measure could be strengthened by adding a duty and accountability on head teachers and principles to collaborate:

“So, I would build in accountability for headteachers and governing bodies. There is the clause about considering collaboration in order to maximise rather than achieving the minimum, but I would build in an accountability to collaborate to deliver the minimum and I would also strengthen that a little.”

98. Sir Adrian⁵² also suggested that there should be a duty and accountability placed in the proposed Measure on head teachers and principals to improve the levels of basic skills of pupils in their institutions:

“If you place a legal duty on heads to drive basic skills and make them accountable for that, you will not transform things overnight, but you will transform minds and behaviours.”

99. A number of witnesses also addressed the issue of incentives and deterrents to comply. Governors Wales⁵³, for example suggested that increased funding could be used to recognise a demonstrable commitment to partnership working and conversely that Estyn could identify a lack of collaboration as part of their inspection process.

100. Having carefully considered the evidence, we recommend that the Minister brings forward amendments at Stage 2 to strengthen the proposed Measure regarding collaboration. The proposed Measure should place a “duty to collaborate” rather than a “duty to consider collaboration”. Furthermore, amendments will be required to ensure that neither local curricula nor collaboration are restricted by Local Authority boundaries.

101. We also recommend that the proposed Measure should place more accountability on head teachers and principals to achieve a certain level of basic skills amongst pupils rather than just a duty to consider co-operation.

Barriers to Collaboration

102. The witnesses repeatedly affirmed their commitment to the principle of collaboration and co-operation and agreed that it was the right way to move forward. Detailed discussions, however, often focussed on the practical ways to

⁵¹ RoP paragraph [42, 4 November 2008

⁵² Ibid paragraph [41]

⁵³ RoP paragraphs [85 and 86] 25 September 2008

achieve collaboration and the potential obstacles and barriers that need to be addressed.

Funding Structures

103. The two different funding methodologies and funding structures for 14-16 provision and 16-19 provision were identified by many of the witnesses as potentially *the major barrier to collaboration*.

“Trying to understand two funding formulae and how they work together is very difficult. What is certain is that the present system encourages competition between institutions. There is no doubt about that, because they can see that their bread and butter, and their future is in retaining pupils and students.” ATL⁵⁴

“The fact that you have two different systems does not help, because it complicates all types of planning. A funding system where you have per capita funding—funding for an individual—is not as flexible as having a funding system that follows individual courses, because an individual can go to different institutions to do different courses, and the money follows them.”

“We have raised what is probably the major issue for us, namely changing the funding system, particularly for post-16 provision, so that it does not create perverse incentives or obstacles to pupils moving from one type of provider to another.” Estyn⁵⁵

104. However finding a solution or an alternative funding structure is not easy.

“The Education and Learning Wales arrangements and efforts to introduce a funding formula failed in the past. Despite the issues about how local authorities fund schools, it is a tried and tested method and I think that it is the best arrangement that we have and that we can find. Local authorities now operate within a three-year budgeting process, but post-16 education is funded on an annual basis and, clearly, that issue needs to be addressed. We need to look at a better way of funding post-16 learning, retaining the confidence of all providers but providing a more effective, efficient and streamlined process than the one that we have currently.” WLGA⁵⁶

105. We recognise the impact the current funding structure is likely to have on collaboration. Whilst many of the witnesses identified the problems associated with this, few were able to offer an alternative.

106. A majority of the Committee recommends the Minister reviews funding structures before commencement. Andrew R T Davies disagreed

⁵⁴ RoP paragraph [64] 30 September 2008

⁵⁵ RoP paragraph [78] 2 October 2008

⁵⁶ RoP Paragraph [172] 2 October 2008

and considered this issue should be addressed before the proposed Measure proceeds further.

Common timetabling

107. The Committee heard differing views on the implementation of common timetabling. Some witnesses said that common timetabling was already in operation in some parts of Wales and that it shouldn't be seen as a major hurdle. Other believed that common timetabling posed substantial practical hurdles which needed to be addressed.

108. Sir Adrian Webb⁵⁷ called for the proposed Measure to be strengthened by placing a duty and accountability on head teachers and principles to promote common timetabling. Governors Wales⁵⁸ did not see timetabling as a particular issue:

“There are issues about that, and some schools collaborating in clusters are finding difficulties with a mismatch in the timetabling. . . In the main, schools collaborating in clusters and colleges are sorting out between themselves what is required for the benefit of the pupils, and that is what it is all about.”

ATL⁵⁹ did not share their view:

“On the timetable, first, the members to whom I have spoken who are responsible for timetabling, particularly in more rural areas, assure me that this would be a nightmare.”

109. The Association of Directors of Education⁶⁰ however, said that common timetabling is not quite the huge barrier that is sometimes suggested although they did agree that it did pose a number of issues and that, for practical reasons, “the introduction of common timetabling is probably a two or three-year process.”

110. In his evidence, the Minister⁶¹ clarified the difference between “harmonised” and common timetabling:

“Harmonised timetabling is what we are largely talking about in Wales, where, for example, you might have timetables fitting together on two days of the week, rather than a common timetable across the week. Common timetabling is unlikely to feature very much, because there are obvious difficulties; schools must deliver the national curriculum, which takes up a fair chunk of their time.”

⁵⁷ RoP paragraph [39] 4 November 2008

⁵⁸ RoP paragraph [59, 25 September 2008

⁵⁹ RoP paragraph [99] 30 September 2008

⁶⁰ RoP paragraph [147] 2 October 2008

⁶¹ RoP paragraph [131] 13 November 2008

111. We recommend that any regulations or guidance made under the proposed Measure refer to the need for “harmonised” timetabling rather than “common” timetabling.

Transport

112. A substantial number of issues around travel and transport have been identified during the evidence sessions for example:

- the cost and responsibility for providing transport, particularly for courses that are not available in the nearest educational institution;
- the current Assembly legislation relating to Learner Travel;
- travelling times for learners especially in rural areas or to attend Welsh medium courses;
- the feasibility of mobile classrooms particularly with equipment for vocational courses;
- the feasibility of information technology, including video conferencing to minimise the need for travel; and
- a requirement for teachers and lecturers to travel rather than learners

Some of these issues were summarised by the National Union of Students⁶²:

“Transport goes alongside timetabling. A lot of this stuff that we are talking about probably goes in the guidance, rather than in the Measure itself. However, there are issues around who provides the transport, whose responsibility it is, whether learners have to pay for this transport in any way, shape or form, what are the health and safety implications of travelling from one institution to the other, and whether there need to be wardens on buses, and so on.”

113. The current Assembly legislation, the Learner Travel (Wales) Measure 2008, does not provide for travel during the school day or subsidised transport to and from an educational institution which is not necessarily the closest school or college but that provides a course agreed as part of the local area curriculum. UCAC⁶³ also raised the issue of cost:

“The Proposed Learner Travel (Wales) Measure—which is going through at present, I believe—states clearly that only the cost of travel to and from the pupil’s main educational institution will be met. Therefore, who is going to pay for any transport during the day? That needs to be considered too.”

114. In response to a question about the increased travel difficulties in rural areas, the Minister⁶⁴ emphasised the opportunities provided by virtual learning through the use of new technologies and video-conferencing referring to a “blended learning approach”. He also talked about peripatetic teaching teams

⁶²RoP paragraph [307] 25 September 2008

⁶³RoP paragraph [148] 30 September 2008

⁶⁴RoP paragraph [103] 14 October 2008

“so that it is not the learner who is expected to travel all of the time; it is expected that teachers and lecturers will travel too”.

115. We recommend that the Minister clearly outlines how he intends to overcome the limitations on transport that the Learner Travel Measure has created and that amendments are brought forward to this proposed Measure to ensure that the transport provision and related costs are not a barrier to collaboration and pupil choice. Furthermore, the Minister should state clearly who is responsible for the costs relating to transport provision.

116. We agree strongly with the need to offer as much choice as possible for all pupils across Wales but we recognise, and this has been corroborated by the evidence that we have heard, that one size does not fit all and that in some areas transport is a genuine barrier.

117. We recommend that more research is undertaken to understand the issues and opportunities, including the use of information technology, that may facilitate collaborative working and may help to reduce the need for travel, for example:

- the use of IT and video conferencing;
- mobility of staff rather than pupils; and
- the use of mobile, peripatetic, classrooms.

A majority of the Committee considered this work should be carried out before commencement. Andrew R T Davies disagreed and considered this issue should be addressed before the proposed Measure proceeds further.

Terms, Conditions and Training for Staff

118. Parity of pay between teachers and college lecturers has been largely achieved in recent years, however some witnesses, for example the Association of Teachers and Lecturers⁶⁵, cited differing terms and conditions in schools and colleges as a potential barrier to joint working and collaboration:

“We would also see a major issue relating to the terms and conditions of school and further education staff. Those would need to be reconciled; otherwise, you could have a situation in which you had staff on different terms and conditions delivering in the same areas.”

119. The Committee also noted that The Further Education Teachers' qualification (England) Regulations 2007 had been introduced in England. These regulations include the introduction of a professional status for further education teachers, the introduction of new qualification based on new professional teaching standards including a Certificate qualification and a

⁶⁵ RoP paragraph [10] 30 September 2008

Diploma qualification and a revised timescale for compliance by relevant persons.

120. We recommend that the Minister considers the provision of training which may be required by teachers and lecturers in relation to joint collaborative working and the provision of courses for the local area curricula.

121. We also recommend that the Welsh Assembly Government brings forward regulations in Wales, similar to the Further Education Teachers' Qualification (England) Regulations 2007 to ensure that further education teachers are able to gain further professional qualifications and enhance the professional development opportunities available to them. A majority of the Committee considered these should be brought forward before commencement. Andrew R T Davies disagreed and considered that the regulations should be brought forward before the proposed Measure proceeds further.

Application of local curriculum provisions in relation to children who are registered pupils of special schools (Section 16)

122. Special schools are excluded from the proposed Measure but this provision allows Welsh Ministers to make regulations applying certain provisions. The Explanatory Memorandum says that they could be used to apply the local curriculum to special schools.

123. The Committee is very keen that learners with additional learning needs (in mainstream schools) will be able to participate fully in the new collaborative arrangements

124. We are concerned that the proposed Measure assumes an increased level of ability to cope with its provisions, for example to cope with increased travel and to undertake courses away from the home institution, and that learners with additional learning needs may benefit from increased levels of support to enable them to participate fully. This was amplified by UCAC⁶⁶ who stated:

“Great efforts have been made to ensure that pupils who have disabilities and less severe learning difficulties can be taught in the mainstream. I am concerned that these pupils, if they find themselves in a situation where they have to travel to separate institutions, will not have the same access to opportunities as others. These young people need flexibility, but they also need stability, and we need to look at those issues, and ensure consistency.”

125. The Committee is not satisfied that the Minister has given due consideration to the ability for pupils in mainstream education with additional learning needs to participate in the opportunities provided by this proposed Measure. Before commencement the Minister must clearly identify these opportunities and the support that needs to be available for pupils and parents.

126. The proposed Measure allows for Ministers to make regulations applying certain provisions e.g. local curriculum, to special schools. Regulations made under this section would be made by the negative rather than the affirmative procedure.

127. We believe that regulations made under Section 16 of the proposed Measure should be subject to the affirmative rather than the negative procedure to allow greater scrutiny by the National Assembly for Wales. We seek clarification from the Minister as to why he considers the negative procedure to be appropriate.

⁶⁶ RoP paragraph [142] 30 September 2008

Learner Support Services (Sections 37 – 39)

128. These sections make provision for learner support services and allow Welsh Ministers to direct governing bodies to provide or secure, and participate in learner support services. ‘Learner Support Services’ is defined as services which encourage, enable or assist young people to participate effectively in educations or training, take advantage of opportunities for employment or participate in their communities.

129. There were two key issues which arose in evidence in relation to learner support services. One was a lack of understanding about what the proposed Measure was actually aiming to achieve and the other related to the need for pupils to receive independent advice and support.

130. Estyn⁶⁷ referred to the role of learning coaches outlined in the Government’s *Learning Pathways 14-19 guidance II*. The Guidance states that:

“Learning Coaches will work with individual learners on a one-to-one basis or in small groups, to establish goals and to develop a Learning Pathway for each learner that will include formal, non-formal and informal opportunities phased over time. In addition, it is important that the learning coach is impartial in terms of advice and support given to learners. It will take into account experiences outside the learning setting, and which help in realising individual ambitions.”

In Estyn’s view: “this is what a learning coach should be doing and the proposed Measure does not reflect this.”

131. Careers Wales⁶⁸ outlined the uncertainty that existed about whether “learning coach activity was a role or a function.” They considered that “A Learner Support Strategy, rather than a Learning Coach Strategy, should clearly outline the role of the many professionals already supporting the learner, outlining how the learning coach function enhances the provision of support.” They argued that “learner support should be “learner centred in its focus.”

132. Confusion seemed to exist currently in relation to the support provided to 14-19 year olds with one head teacher telling us that there are currently 5 or 6 different people providing careers advice and pastoral support to pupils within his school.⁶⁹

133. There was some concern that those providing learner support services would feel bound by the needs of their employer rather than putting the needs of the pupil first. University and College Union Wales⁷⁰ made the point that:

“The employment relationship does bring with it a number of expectations and we believe that the learning coach must be employed

⁶⁷ Written evidence LS 10

⁶⁸ Written evidence LS21; RoP paragraph [397] 2 October 2008

⁶⁹ RoP paragraphs [162- 165] 13 October 2008

⁷⁰ Written evidence LS 8

by an organisation which is not directly involved in the delivery of the 14-19 curriculum”.

134. They were concerned that individual coaches would feel under pressure to “ensure that a learning pathway developed for an individual learner would be based on the provision from their employer”

135. Fforwm⁷¹ referred to the need for impartial careers advice and asserted the need for a “stronger statement “ in the proposed Measure “setting out the requirement for impartial advice”. They referred to the provision contained in the Education and Skills Bill (Clause 80) currently being debated in Westminster. In relation to careers advice it states that:

(2B) Any such information must be presented in an impartial manner, and

(a) any such advice must be advice which the person giving it considers will promote the best interests of the pupils concerned; and

(b) accordingly, in giving the advice, that person must not seek to promote, contrary to the pupils’ best interests, the interests or aspirations of the school or of other persons or institutions’

They also suggested that there might be a role for Estyn in examining the quality and independence of advice to pupils.

136. Sir Adrian Webb⁷² supported a similar approach and called for there to be a clear duty on head teachers and principals to be “accountable for ensuring that there is genuinely well informed and impartial advice about course options and career options.”

137. WLGA⁷³ did not have the same concerns about independence but outlined the need for “professionalism and objectivity of those fulfilling the potential roles...”. They did however identify the need to “avoid the role as being seen as just an add-on to another role.”

138. ASCL⁷⁴ supported the need for independent advice but warned against “someone parachuting into a class full of people whom they do not know...with no background information on that child.”

139. The Minister⁷⁵ pointed out that the proposed Measure made provision for a “function” rather than an individual. He asserted that learner support services would be delivered by a number of professionals throughout a school. He agreed with the need for individual institutions to demonstrate impartiality and suggested that Careers Wales would be able to provide that impartiality

⁷¹ Written evidence LS 12; RoP paragraph [563] 2 October 2008

⁷² RoP paragraph [73] 4 November 2008

⁷³ RoP paragraph [248] 2 October 2008

⁷⁴ RoP paragraph [168] 13 October 2008

⁷⁵ RoP paragraph [37] 13 November 2008

although it was not clear from his evidence how he saw Careers Wales working alongside the other professionals helping to deliver this “function”.

140. It was clear from the evidence that there was widespread confusion about the provision of learner support services. We have serious concerns about the lack of clarity provided in the proposed Measure in relation to learner support services and about the impartiality of advice. This is a hugely important function if pupils are to get the most from collaborative working. Without the right support for pupils, provision of extra choice becomes a purely bureaucratic exercise. We agree that learner support should be “learner -centred” in its focus.

141. We are concerned that the Minister sees Careers Wales as being able to deliver all of the independent advice that is needed. Whilst we acknowledge that Careers Wales has a very important part to play we support their view that learner support is about a much broader set of advice and guidance than simply careers advice. Provision should be seeking to deliver a holistic learner support strategy, not simply just learning coaches.

142. We believe that support for individuals will be key to the success of the Learning Pathways policy and it is not clear how this will be delivered through the proposed Measure. A majority of the Committee considered that the Minister must bring forward clear proposals in relation to learner support services before commencement. Andrew R T Davies disagreed and considered this issue should be addressed before the proposed Measure proceeds further.

143. In addition we recommend the proposed Measure should be amended to ensure that the needs of the learner are paramount and that any professional providing or delivering learner support services has a statutory duty to demonstrate impartiality.

144. We consider that a statement of intent similar to that included in Clause 80 of the Education and Skills Bill should be included in the proposed Measure in relation to all learner support services, not just careers advice.

Welsh Medium provision

145. Witnesses have also identified a substantial number of issues that will particularly affect Welsh medium and bilingual provision, for example:

- a lack of suitably qualified teachers and particularly further education lecturers who can deliver Welsh medium courses;
- a lack of information about demand for Welsh medium or bilingual courses;
- a lack of information about future career opportunities;
- the need to travel longer distances for Welsh medium provision; and
- a restricted number of choice of courses compared to English medium provision.

146. UCAC⁷⁶ commented on the lack of provision for Welsh medium education in the proposed Measure:

“That causes us concern because, clearly, we do not currently have the capacity to give Welsh-medium pupils the same rights as English-medium pupils have”. Their concerns were supported by the Welsh Language Board⁷⁷ who highlighted the need for recognition of Welsh medium provision in the proposed Measure:

“there is a need for something to be included in the Measure to ensure that the students who choose to study through the medium of Welsh have the same rights as those students who choose English-medium education.”

147. WJEC⁷⁸ highlighted concerns about the provision of a minimum number of courses:

“In no way do we want the situation of people claiming to be delivering a wider range of options because they are delivering in two languages. For any one young person, that is still only one choice”

148. We recommend that the Minister brings forward amendments at Stage 2 to make provision on the face of the proposed Measure for learners to have an entitlement to study through the medium of Welsh if they so choose.

149. Fforwm⁷⁹ amongst others expressed concern that the proposed Measure was progressing before the Government had published their Welsh medium Education Strategy. They said that collaborative developments must dovetail with the Welsh medium Education Strategy, due to published in 2008-09:

⁷⁶ RoP paragraph [13] 30 September 2008

⁷⁷ RoP paragraph [39] 9 October 2008

⁷⁸ RoP paragraph [239] 25 September 2008

⁷⁹ Written evidence LS12

“DCELLS’ forthcoming Welsh-medium Education Strategy will need to consider how the range of options at the age of 14 and 16 can be made available through the medium of Welsh and/or bilingually.”

150. In light of the evidence on this we recommend that the Government publishes its Welsh Language Education strategy before commencement. This will ensure that the provisions of the Learning and Skills (Wales) Measure for Welsh medium education can be considered in the wider context of Welsh medium education more generally.

Faith Schools

151. The Committee received written evidence from the Catholic Education Service⁸⁰, in which they emphasised a number of points including the need for local authorities to work across local authority boundaries as well as:

“The values and ethos of schools with a religious character need to be taken into account in any proposed local co-operations.”

And

“Account must be taken of the implications of large catchment areas for Catholic schools.”

152. The position of faith schools was also discussed by the Committee with the National Union of Head Teachers and the Association of School and College Leaders⁸¹. It was agreed that the opportunities and barriers facing faith schools were very similar to those facing Welsh medium schools:

“It is a similar situation to the Welsh-medium issue—they should have the ability, and the capacity, to offer as wide a range of choices as for the rest of the school population, through the accepted framework. It is a potential issue, because they are geographically isolated.”

153. We recommend the Minister consider further the impact of the proposed Measure on faith schools before commencement.

⁸⁰ Written evidence LS 7

⁸¹ RoP paragraph [198] 13 October 2008

Commencement (Section 46)

154. There are no commencement dates in the proposed Measure and Welsh Ministers can bring different sections into force at different times. In the *Skills that Work for Wales Action Plan July 2008*⁸² the Government stated that “Implementation of the Measure will commence for Year 10 pupils from September 2009 with full roll-out within four years.”

155. Whilst supportive of the aims of the proposed Measure, teaching unions⁸³ in particular were universal in their view that a roll out from September 2009 was too ambitious. They identified the various practical details that would need to be considered such as timetabling, transport (both time and cost), funding, development of bilingual courses, management capacity, and disparity in terms and conditions for teachers and lecturers amongst others.

156. UCAC⁸⁴ pressed for “very careful consideration of timing the implementation of any Measure.” They considered that “Wales does not have the capacity at present to implement the requirements of the Act as it stands.”

157. NAHT Cymru⁸⁵ considered that “we are pushing too hard, too fast on this, as opposed to allowing the evolution of the very good co-operative partnership arrangements that are already in place.

158. ASCL⁸⁶ proposed “delaying compulsion for three years.... [and]... if there are any areas of Wales that have not complied with the requirements to deliver learning pathways...tackle them then, rather than rushing in now with compulsion for everybody.”

159. In their written evidence Estyn⁸⁷ stated that:

“We feel that there needs to be a sufficiently long lead-in time before the proposals in the Measure can commence. It is likely that a commencement date of 2009 is unrealistic, given all the arrangements that need to be set up to enable learners to choose their course.”

160. However it became clear taking evidence from others that the Minister did not propose a full roll-out from September 2009. We requested further information from him on this and he provided details of a phased roll-out which would proceed by year group and also by placing local authorities in bands with those who felt most able to proceed from September 2009 in Band A. Band A authorities will need to provide a choice of 28 courses for year 10 pupils from September 2009 with Band B and C Authorities providing 26 and 24 respectively. Full details of the phased roll-out are included in Annex C.

⁸² http://new.wales.gov.uk/dcells/publications/policy_strategy_and_planning/skills_that_work_for_wales/stwfwenglisg.pdf?lang=en

⁸³ RoP 30 September & 13 October 2008

⁸⁴ Written evidence LS 15

⁸⁵ RoP paragraph [165] 30 September 2008

⁸⁶ Ibid paragraph [185]

⁸⁷ Written evidence LS 10

161. Following the release of this information we contacted Estyn⁸⁸ to seek their view on the Minister's proposals. They stated that:

“The proposals mean that no local authority is required to implement the full minimum entitlement in 2009 and all will have reached the full minimum entitlement by 2012. I think that these proposals are sensible and appropriate. I am pleased to see that the assignment of local authorities to bands has been based on discussion with them and that each of the local authorities have agreed a provisional banding position. “

162. Governors Wales⁸⁹ considered a phased approach to be appropriate: “It seems rational to start with year 10. They have just taken their options and are starting to work towards their qualifications. Phasing it in over four or five years is a logical approach”.

163. Careers Wales⁹⁰ supported a gradual approach acknowledging that “...you need to change sufficiently to cause a stretch while ensuring that it is still reachable, otherwise you have set yourself up for failure....[and]... we support a phased roll-out , because we need to get the travel of direction started...”.

164. However ASCL⁹¹ told us that a phased roll-out did not dramatically affect their concerns. They said that “...it is not a matter of whether we are looking at 24,26 or 28 courses....We are talking about the time in which we can build strategic relationships with a number of partners. “ NAHT⁹² supported this view adding that “...the planning phase would be rushed... each institution will find it extremely difficult to deliver whatever is then determined in what is a two-to-three month planning period.” Both ASCL and NAHT felt that a phased roll-out beginning in September 2010 was more appropriate⁹³.

165. The Minister's⁹⁴ view was that the timetable was achievable. He considered the work the Government had already done with the 14-19 Networks meant that considerable progress has already been made. He stated that: “They [14-19 Networks] are the key stakeholders on implementation, because they represent those who will have to do the implantation. ... [and]... we have worked with them closely... on the timetable, and on the phasing and banding... So with all that background work, we are confident that this proposed Measure is achievable.”

166. Despite the Minister's approach to a phased roll-out a significant majority of witnesses were concerned about the implementation timescale. It appears that there is a very real lack of understanding amongst teaching professionals in particular, about the Minister's proposals for implementation and a clear gap between the claims being made by local authorities regarding readiness for a

⁸⁸ Annex E – Correspondence from Estyn

⁸⁹ RoP paragraph [13] 25 September 2008

⁹⁰ RoP paragraph [354] 2 October 2008

⁹¹ RoP paragraph [12] 13 October 2008

⁹² Ibid paragraph [16]

⁹³ Ibid paragraphs [29,30]

⁹⁴ RoP paragraph [22] 14 October 2008

phased roll-out in September 2009 and the preparedness and understanding of those teaching professionals. In addition the future role of the 14-19 Networks is not fully understood by practitioners who are apparently represented on those Networks.

167. It was not clear from the Minister's evidence when he expects to make the necessary regulations and issue guidance but clearly that cannot happen before the proposed Measure has been passed by the Assembly and received Royal Approval. The proposed legislative timetable will mean that Royal Approval is not likely to be received until April 2009 at the earliest. That would seem to give schools and colleges very little time to prepare and could delay the process of current year 9 pupils being able to choose their options.

168. We note that the Minister has now set up an implementation group and it is clear that the proposals in the proposed Measure cannot succeed without the will of those involved in delivering it. However, on the basis of the evidence before us currently, we believe the proposed timetable for implementation is unreasonable. Therefore we recommend the Minister reconsiders the timetable for commencement before the proposed Measure proceeds.

169. Since this Committee will conclude its work on the proposed Measure early next year it would seem appropriate for the Enterprise and Learning Committee to monitor progress with implementation if they are able to accommodate this within their work programme.

Financial Implications

170. The Finance Committee considered the Proposed Measure and the accompanying Explanatory Memorandum and reported to the Assembly on 25 November 2008⁹⁵. In addition to the financial information contained in the Explanatory Memorandum the Minister provided additional information in order to clarify some of the financial information.

171. The Committee took evidence from the Minister on two occasions and in the light of these discussions requested further additional financial information. Full details of the meetings and papers provided by the Minister are available in the Finance Committee's report.

172. The Committee made a number of recommendations relating to the assessment of costs. They made specific reference to travel costs, the allocation of funding for the local networks, the needs of rural areas, staff retraining, and the development of new and extended welsh medium provision. 173. They noted that the Explanatory Memorandum did not provide sufficient information regarding the costs of implementing the proposed Measure. In addition:

“Several elements of the calculations supporting the costs of this proposed Measure have been based on estimates and assumptions but, despite 2 further papers, the Government has not explained what these estimates and assumptions are⁹⁶.”

They concluded that they had little alternative “but to recommend that the stage one debate on the general principles of the Measure is not brought forward until this information is available⁹⁷.”

174. We note the recommendations made by the Finance Committee and recognise that a number of the issues they raise were also raised in evidence to this Committee. We therefore recommend that these concerns are addressed before commencement.

⁹⁵ Annex F – Finance Committee Report

⁹⁶ Ibid para 22

⁹⁷ Ibid para 23

Subordinate Legislation Provisions

175. The Subordinate Legislation Committee first considered the proposed Measure on 8 April 2008 during the Government's consultation on a draft proposed Measure. They considered it again on 29 September and reported that they had no concerns regarding the subordinate legislation provisions in the proposed Measure. Their report is attached at Annex G

Proposed Learning and Skills (Wales) Measure Committee

Written evidence received

Reference	Name/ Organisation
LS1	Ceredigion 14-19 Network
LS2	Higher Education Wales
LS3	Construction Skills in Wales
LS4	Association of teachers and Lecturers
LS5	National Training Federation for Wales
LS6	Rathbone Cymru
LS7	Catholic Education Service for England and Wales
LS8	University and College Union Wales
LS9	Oxford Cambridge and RSA Examinations (OCR Cymru)
LS10	Estyn
LS11	The Alliance of Sector Skills Councils
LS12	Fforwm
LS13	Governors Wales
LS14	Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government
LS15	Undeb Cenedlaethol Athrawon Cymru (UCAC)
LS16	Coleg Gwent
LS17	CBI Wales
LS18	Association of School and College Leaders
LS19	Cymdeithas Ysgolion dros Addysg Gymraeg (CYDAG)
LS20	NAHT Cymru
LS21	Careers Wales Cardiff and Vale
LS22	Cymdeithas yr Laith
LS23	GoSkills – The Sector Skill Council for Passenger Transport

Proposed Learning and Skills (Wales) Measure Committee

Schedule of oral evidence

Date	Witnesses
25 September 2008	<p>Governors Wales</p> <ul style="list-style-type: none"> • Alun Tait, Treasurer • Ray Wells, Development Officer (North) <p>National Training Federation Wales (NTfW)</p> <ul style="list-style-type: none"> • Lord Rowlands CBE, President • Arwyn Watkins, Chair <p>Welsh Joint Education Committee (WJEC)</p> <ul style="list-style-type: none"> • Gareth Pierce, Chief Executive • John Davies, Assistant Director (Development) <p>National Union of Students Wales (NUS Wales)</p> <ul style="list-style-type: none"> • Ben Gray, President • Carl Harris, Deputy President
30 September 2008	<p>Nation Union of Teachers Cymru (NUT)</p> <ul style="list-style-type: none"> • David Evans, Wales Secretary <p>NASUWT Wales</p> <ul style="list-style-type: none"> • Rex Phillips, Wales Organiser <p>Undeb Cenedlaethol Athrawon Cymru (UCAC)</p> <ul style="list-style-type: none"> • Elaine Edwards, General Secretary • Rebecca Williams, Policy Officer <p>Association of Teachers and Lecturers (ATL)</p> <ul style="list-style-type: none"> • Dr Philip Dixon, Director <p>National Association of Headteachers (NAHT) Cymru</p> <ul style="list-style-type: none"> • Iwan Guy, Acting Director • Gareth Matthewson, Member of the Welsh Committee <p>Association of School and College Leaders (ASCL) Cymru</p> <ul style="list-style-type: none"> • Gareth Jones, Secretary • Phil Whitcombe, President

Date	Witnesses
02 October 2008	<p>Estyn</p> <ul style="list-style-type: none"> • Dr Bill Maxwell, Her Majesty's Chief Inspector of Education and Training in Wales • Nigel Vaughan, Her Majesty's Inspector • Meilyr Rowlands, Her Majesty's Inspector <p>Welsh Local Government Association (WLGA)</p> <ul style="list-style-type: none"> • Dr Chris Llewelyn, Director of Lifelong Learning, Leisure and Information • Daisy Seabourne, Policy Officer • David Eynon, Coordinator 14 – 19 Pathways, Caerphilly County Borough Council <p>The Alliance of Sector Skills Council</p> <ul style="list-style-type: none"> • Elaine Moore, Wales Manager • Kathryn Hopkins-Morgan, Summitskills • Bill Peaper, Semta <p>Careers Wales</p> <ul style="list-style-type: none"> • Mark Freeman, Chief Executive • Alan Boxford, Board Member <p>Fforwm</p> <ul style="list-style-type: none"> • Dr John Graystone, Chief Executive • Brian Robinson, Chair • Berni Tyler, Head of Quality and Standards
09 October 2008	<p>Welsh Language Board (WLB)</p> <ul style="list-style-type: none"> • Alun Charles, Development Officer, Early Years and Schools Unit • Jeni Smallwood, Development Officer, Young People and Skills Unit <p>Confederation of British Industry (CBI) Wales)</p> <ul style="list-style-type: none"> • David Rosser, Director
13 October 2008	<p>National Association of Headteachers (NAHT) Cymru</p> <ul style="list-style-type: none"> • Dr Chris Howard, National Vice President

Date	Witnesses
	<p data-bbox="485 253 1267 322">Association of School and College Leaders (ASCL) Cymru</p> <ul data-bbox="485 333 914 412" style="list-style-type: none"> <li data-bbox="485 333 884 367">• Gareth Jones, Secretary <li data-bbox="485 378 914 412">• Phil Whitcombe, President
14 October 2008	<p data-bbox="485 486 874 519">Deputy Minister for Skills</p> <ul data-bbox="533 568 1334 801" style="list-style-type: none"> <li data-bbox="533 568 831 602">• John Griffiths AM <li data-bbox="533 613 1299 683">• Grace Martins, Legal Services Department, Welsh Assembly Government <li data-bbox="533 694 1334 801">• Mark Leighfield, Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government
04 November 2008	<ul data-bbox="533 904 818 938" style="list-style-type: none"> <li data-bbox="533 904 818 938">• Sir Adrian Webb
13 November 2008	<p data-bbox="485 1025 874 1059">Deputy Minister for Skills</p> <ul data-bbox="533 1108 1334 1341" style="list-style-type: none"> <li data-bbox="533 1108 831 1142">• John Griffiths AM <li data-bbox="533 1153 1299 1223">• Grace Martins, Legal Services Department, Welsh Assembly Government <li data-bbox="533 1234 1334 1341">• Mark Leighfield, Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government

Letter from the Committee Chair to the Deputy Minister for Skills dated 6 October 2008

Dear John

Proposed Learning and Skills (Wales) Measure 2008

As you are aware the Committee has taken a substantial amount of evidence on the proposed Measure and still has a number of evidence sessions planned. However, during the last few meetings witnesses have referred to the proposed phased roll-out. They seem to have information relating to bands for roll-out and have referred to a proposal to only include qualifications that are at least level 2 in the roll-out. The implication is that level 1 qualifications are perceived as having no value in this regard. As you know many learners need to obtain level 1 qualifications as progression to level 2. But not to allow such level 1 qualifications to “score” could act as a disincentive to learners.

Many witnesses have expressed concerns about the timing of the roll-out and the Committee is working on the basis of the information contained in the *Skills that Work for Wales Action Plan* July 2008 in which you say that implementation of the Measure will commence for Year 10 pupils from September 2009 with full roll-out within four years. If you are able to provide more detailed information on your plans for roll-out it will help the Committee’s work greatly. We are keen that we are considering the general principles of the proposed Measure with all of the facts before us. This will also make for a more effective meeting with you when you come to Committee on 14 October.

I would be grateful therefore if you could let us have additional information relating to your proposals for the phased roll-out as well as information on the qualification levels.

Ideally we would have this information a week before the meeting with you on 14 October, but given the tight turnaround I would be grateful for the information by Thursday 9 October to enable Members sufficient time to consider it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeff Cuthbert', written in a cursive style.

**Jeff Cuthbert AM
Chair**

Reply from Deputy Minister for Skills dated 9 October 2008

John Griffiths AC/AM
Y Dirprwy Weinidog dros Sgiliau
Deputy Minister for Skills



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref yourref
Ein cyf/Our ref ourref

Mesur Arfaethedig ynghylch Dysgu a Sgiliau
(Cymru)
Proposed Learning and Skills (Wales) Measure
Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

9 October 2008

Dear Jeff,

Proposed Learning and Skills Measure (Wales) 2008

Thank you for your letter of 6 October, which sought additional information on the approach to be taken to implementing 14-19 Learning Pathways.

I enclose a paper to submit to the Stage 1 Measure Committee, for consideration in advance of my appearance on 14 October, which lays out the detail of how the phased implementation planned from September 2009 will work.

I hope that this goes some way to clarifying matters for Committee Members, but I am, of course, happy to answer any additional questions they may have on this or any other aspect of the Proposed Measure when I provide my evidence on the 14th.

INC: 14-19 Learning Pathways, Implementation

Bae Caerdydd • Cardiff Bay
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Committee Paper: Proposed Learning and Skills (Wales) Measure 2008 Implementation Issues

1 Introduction

1.1 This paper is submitted to assist the committee in its consideration of the proposed Learning and Skills (Wales) Measure.

1.2 The paper, as requested, seeks to consider a number of key issues surrounding the proposed implementation schedule for the Measure and to provide an explanation as to how this proposed schedule was arrived at.

2 Background

2.1 The 14-19 Learning Pathways Policy has been developed since 2002, the consultation process in the construction of the policy involved a wide range of stakeholders. Learning Pathways Guidance¹ was first issued to stakeholders in 2004. In essence the policy seeks to develop a blend of wider curriculum choice and high quality learner support that assists young people in the achievement of their full potential. It does this by seeking to build upon existing good practice and by promoting cooperation and joint working amongst providers of learning. Over the last three years £73.5 million has been spent with the purpose of facilitating this transformation. The proposed Learning and Skills (Wales) Measure 2008 seeks to underpin this policy.

2.2 The policy has been delivered via 14-19 Learning Networks. There are 22 Network based on local authority area boundaries. These 14-19 Networks are strategic partnerships which include representatives from all appropriate sectors. They set strategic priorities for the area over a three year timeframe. The 14-19 Networks assist in securing the range of programmes and support necessary to ensure learners have access to all elements of Learning Pathways. An Annual important instrument in improving learning outcomes through securing wider curriculum choice and high quality learner support.

3 Proposed Learning and Skills Measure (Wales) 2008

3.1 The proposed Learning and Skills (Wales) Measure is a key legislative component in the Welsh Assembly Government's strategy for transforming provision for learners across Wales.

3.2 The proposed Measure underpins this flagship policy "14-19 Learning Pathways" and is integral to the Welsh Assembly Government's '*Skills that Work for Wales*² Strategy that establishes a distinctive Welsh agenda for education and training.

1 Learning Pathways Guidance WAG 2004.

2 Skills That Work for Wales: A Skills and Employment Strategy and Action Plan, July 2008 WAG

3.3 The proposed Measure:

- creates a right for learners aged 14-19 to whom the Measure applies to elect to follow a course of study from a local area curriculum; and
- requires Local Education Authorities and the Governing Bodies of Schools and Further Education Institutions to consider cooperation in order to seek to maximise the availability of the courses of study within local curricula.

A local area curriculum will contain a wide range of options. For the first time young people across Wales will have an entitlement to elect to study from a minimum number of courses which will include both academic and vocational routes. In making such elections learners will require advice, guidance and support so that they are confident in having made the right choice.

3.4 A local curriculum at Key Stage 4 would normally consist of the following:

- courses offered to learners, available at their registered school
- courses offered to learners through partnership / co-operation with other providers such as schools, FE Colleges and Private Training Providers which may be available at the lead setting or at another learning environment.

3.5 Two main criteria are set out in relation to Local Curriculum requirements:

- Achievement of a minimum score within the Local Curriculum. (Set to ensure adequate volume or size of a Local Curriculum)
- A minimum number of choices from level 2 courses for learners. (Set to broaden current practice, particularly in relation to vocational provision for learners at key stage 4) Level 1 courses are included in the required score.

3.6 GCSE qualifications cover both levels 1 (grades D-G) and levels 2 (grades A*-C), whereas vocational qualifications tend to be available separately at level 1 and separately at level 2. It is therefore necessary to develop a method of treating vocational qualifications that ensures that:

- the value and relevance of level 1 programmes for some young people is recognised (for this reason Level 1 vocational courses are included in the vocational point score);
- vocational programmes are seen as an option of “equal value” and are therefore available at the highest equivalent level resulting from GCSE (i.e. A-C) and are not just available at level1 (GCSE equivalent D-G);

-that young people on vocational courses have an entitlement to access level 2 provision where this is possible and where they are able to demonstrate the appropriateness of this level for them.

In short we wish for young people capable of studying for level 2 vocational courses to have the opportunity to do so. They should not just be presented with a level 1 option.

3.7 To date development of vocational provision pre 16 has tended to focus upon level 1. This raises questions with regard to equal value and parity of esteem that need to be addressed.

3.8 14-19 Learning Pathways policy has had as one of its aspirations to “lift the proportion of 16 year olds with level 2 and the proportion with level 3 qualifications at 19”³ since its inception. Sector Skills Council’s advise that pre 16 learners should study vocational programmes at level 2 where available to meet the requirements of employers.

3.9 As stated previously, level 1 vocational courses are included in the vocational point score. This recognises and values level 1 vocational provision. Where a course is offered at level 1 within a local curriculum but provision is made for learners who meet the level 1 competency to access a level 2 qualification within that key stage, this may be included as a choice even if learners choose not to access the level 2. This puts vocational provision on equal terms with GCSE provision. It is noted that a number of vocational courses are not available to pre 16 learners at level 2. This includes for example courses in construction, hairdressing and motor vehicle studies. Where this is the case, level 1 programmes will count as a choice in their own right.

3.10 The scoring mechanism takes account of the variation in size of courses; the threshold equivalencies system (currently being used in relation to RE2⁴ returns for schools) will be adopted. Thresholds represent a volume or ‘size’ of qualifications at a specific level on the National Qualifications Framework (NQF). For example, a full GCSE represents a score of 20 (20% of threshold level 2); a BTEC First Diploma represents a score of 80 (80% of threshold level 2). The total point score requirement for vocational provision at Key Stage 4 is 200 with a minimum number of 5 choices at level 2. Therefore any level 1 course may contribute to the score as long as the 5 choices at level 2 have been met.

3 Learning Pathways 14-19 Guidance, WAG, 2004.

4 The RE2 form contains summary examination information, specific to each school, compiled by the WJEC on behalf of the Welsh Assembly Government.

4 Proposed Implementation

Staged Introduction by Year Group

4.1 Partners in 14-19 Learning Networks have been advised that the intention would be for the proposed Measure to be implemented from September 2009 subject to the approval of the National Assembly.

4.2 A staged approach to the implementation has been proposed. It would appear logical to introduce implementation with Year 10 and then to roll out the policy to subsequent year groups. This approach would be in line with feedback and recommendations received from stakeholders during the consultation period.

4.3 A staged implementation would proceed by year group as shown below:

- September 2009	Year 10
- September 2010	Years 10,11
- September 2011	Years 10,11,12
- September 2012	Years 10,11,12,13

It would have been possible to proceed with implementation more rapidly by implementing for Years 10 and 12 in 2009. The staged approach is however recommended on a number of grounds including the desire to ensure that the educational systems is allowed time to adjust to the requirements of the proposed Measure and is not placed under unreasonable pressure.

Phased Implementation – Banding by Local Authority Area

4.4 It is recognised that different areas of Wales are at different levels of preparedness for the implementation of the proposed local curricula requirements of the Measure. Under the proposed Measure these requirements will be specified in regulations.

4.5 In order to recognise that different areas will be working from different starting points a banding arrangement has been proposed for implementation at Key Stage 4. This is intended to ensure that pressure on stakeholders is kept to a manageable level whilst demonstrating a clear commitment to the provision of the minimum entitlement. The banding arrangements in terms of number of choices are shown in Table 1. The process involves assigning a local authority area to one of 3 bands; each band will represent progression towards achievement of the full minimum entitlement by a specified date. All bands will have reached the full minimum entitlement by 2012.

4.6 Table 1: Key Stage 4 – Number of Courses and Local Authority Bands

Year	2009	2010	2011	2012
Band A	28	30	30	30
Band B	26	28	30	30
Band C	24	26	28	30

4.7 In the past 6 months Welsh Assembly Government officials have held meetings with all 22 local authority areas to discuss the potential placement of each local authority area within the banding arrangement. It was felt that discussions were appropriate at a local authority level as it is the local authority that will have responsibility for the formation of the local curricula at Key Stage 4. All 22 local authority areas have agreed a provisional banding position. These meetings also served the purpose of providing for consultation on policy that will form the creation of any regulations relating to local curricula under the proposed Learning and Skills (Wales) Measure.

Letter from Committee Chair to Dr Bill Maxwell, Her Majesty's Chief Inspector of Education and Training in Wales, Estyn, dated 15 October 2008

Dear Dr Maxwell

Proposed Learning and Skills (Wales) Measure 2008

I am writing regarding your written evidence in response to the Committee's consultation on this proposed Measure and the oral evidence you gave to the Committee during the meeting on 2 October.

Since you came to Committee, the Deputy Minister for Skills has supplied the Committee with additional information on the proposed phased implementation of the proposed Measure from September 2009 and I have enclosed a copy of his paper for information. Following the publication of this additional information, I would be grateful if Estyn could comment further on the implementation proposals. I would welcome your comments by 30 October to enable them to be considered by the Committee when the Report is being prepared.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeff Cuthbert', with a long horizontal flourish extending to the right.

Jeff Cuthbert AM
Chair

Reply from Dr Bill Maxwell, Her Majesty's Chief Inspector of Education and Training in Wales, Estyn, dated 30 October 2008

Dear Mr Cuthbert,

Thank you for your letter of the 15 October 2008 in which you asked for my views on the phased implementation of the propose Measure from September 2009. I have now considered the additional submission from DCELLS that you sent me with your letter and I can confirm that the phased process set out in that submission does address my concerns satisfactorily. You will recall that in my oral evidence to the Committee I said that I recognised the urgency in moving ahead with this agenda and that would not want the process of implementation to be held back any longer than was necessary. However, I also said that full implementation in September 2009 was not achievable and that a phased introduction over three or four years was reasonable, possibly starting with the areas that are most ready to move on this agenda.

The additional information shows the proposed staged introduction by year group and the phased introduction by bands in different local authorities. The proposals mean that no local authority is required to implement the full minimum entitlement in 2009 and all will have reached the full minimum entitlement by 2012. I think that these proposals are sensible and appropriate. I am pleased to see that the assignment of local authorities to bands has been based on discussion with them and that each of the local authorities have agreed a provisional banding position.

Since my oral evidence to the Committee, I have received further information about some of the detail of the proposed entitlement at key stage 4 that will be set out in the regulations that will underpin the Measure. I am aware that there has been some debate about the fact that this will specify a number of courses at only level 2. In my view, the entitlement as set out in this way is appropriate. I understand why the entitlement has specified level 2 courses as these are the often the weakest areas in networks' provision. We have consistently said this in our reports on 14-19 provision. The entitlement does not prevent the provision of courses at entry level or level 1. The spirit of Learning Pathways 14-19 and the Measure is to expand choice and there is still the need for courses at entry level and level 1. The entitlement is minimum and networks can and should offer entry level and level 1 courses in order to meet learners' needs.

I hope that provides you with a clear statement of my views. Please get in touch with me if you or your Committee require further comments.

Yours sincerely



Dr Bill Maxwell, Her Majesty's Chief Inspector of Education and Training in Wales

NATIONAL ASSEMBLY FOR WALES
REPORT FROM THE FINANCE COMMITTEE

Report on the financial implications of the Proposed Learning and Skills (Wales) Measure

Background:

1. Standing Order 14.2 states:

The [Finance] Committee may also consider and, where it sees fit, report on:

(i) financial information in explanatory memoranda accompanying proposed Assembly Measures;

The Proposed Measure:

2. The Welsh Assembly Government introduced the proposed Learning and Skills (Wales) Measure to the Assembly on 7 July 2008. The proposed Measure would legislate for the education of pupils in education and training aged 14 – 19 in Wales.

3. The Measure would seek to ensure that all young learners have an entitlement to a learning pathway framework which enables them to achieve an appropriate balance of learning experiences that best meet their individual needs.

4. Specifically, the Measure would:

- Place a duty on Local Education Authorities in Wales to form local curricula for learners aged 14-16, and on the Welsh Ministers for learning aged 16-19 that contains a range of option choices across the specified learning domains;
- Enable the Welsh Ministers to specify the minimum number of courses of study to be selected for inclusion within a local curriculum, specify the particular learning domain into which a course of study falls and specify the minimum number of vocational courses of study to be included in a local curriculum;
- Create a right for pupils of maintained schools to elect to follow courses of study from a local area curriculum. It will also enable regulations to specify the maximum amount of courses of study a pupil has the right to choose to elect to follow;

- Specify the grounds by which a Head Teacher/Principal may decide that a pupil is not entitled to follow a course they had elected to do and enable regulations to be made in relation to the making of those decisions;
- Place a duty on Governing Bodies and Head Teachers of maintained schools and Governing Bodies and Principals of the Further Education sector to assist a Local Education Authority (LEA) in planning local area curricula, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers;
- Maximise the availability of courses of study included in a local curriculum via co-operation between Governing Bodies of maintained schools and Further Education Institutions, and Local Education Authorities to deliver a wide range of options of study;
- Enable the Welsh Ministers to issue guidance and directions in relation to joint-working, co-operation and collaboration;
- Give Welsh Ministers the power to amend learning domains;
- Enable Welsh Ministers to make regulations as to the making of requests and decisions in the determination of a pupils lead learning setting.

Evidence

5. The Finance Committee considered the Proposed Measure and the accompanying Explanatory Memorandum. It also considered paper FIN(3) 12-08 (p4) Proposed Learning and Skills (Wales) Measure – financial information which was provided subsequently by officials in order to clarify some of the Financial information.

6. At its meeting on 2 October, the Finance Committee took evidence from John Griffiths, Deputy Minister for Skills, Lynne M Hamilton, Director, Business Improvement and Resource Investment Group, DCELLS and Mark Leighfield, Head of 14-19 Learning Pathways, Welsh Assembly Government.

7. The Finance Committee took further evidence from the Deputy Minister for Skills, Elizabeth Williams, Head of Children and Young People’s Strategy and Mark Leighfield, Head of 14-19 Learning Pathways at its meeting on 6 November.

8. The Minister provided a further note, date 13 November 2008, in response to questions asked by the Committee

Level of Funding

9. The Measure is intended to build on the Welsh Assembly Government policy ‘14-19 Learning Pathways’ which is committed to ensuring the readiness, by the age of 25, of 95% of young people for highly skilled employment or higher education by 2015. Funding for the implementation of the Measure is intended to come from the £32.5m already available to deliver the 14-19 Learning Pathways programme.

10. At the Finance Committee meeting on 2 October, the Deputy Minister confirmed [ROP 2/10/2008 p87] that the proposed Measure would require a continuation of these funds and would not require any additional funding [para 89 ROP 2/10]. However, the Deputy Minister also stated that 'As the majority of funding to local authorities is unencumbered the potential expenditure by local authorities on the 14-15 age cohort in secondary schools can only be broadly estimated.' [FIN(3) 12-08 (p4) para2.3]. **The Finance Committee is concerned that such a broad estimation of current spending levels may affect the robustness of any subsequent calculations of cost.**

11. The Deputy Minister told the Finance Committee that the co-operation and collaboration that underpins the Measure will ensure that better use is made of the existing funding for 14-19 learning pathways. Projected savings have been identified in the eradication of duplication and the economies of scale gained through collaborative course provision. Further savings were expected due to the projected decline in the 14-19 population although these savings would be largely negated by the intended increase in participation.

12. Savings will be further offset by an increase in the provision of vocational courses which are delivered at a higher cost than classroom based study.

13. The Finance Committee has noted that current level of spending and the projected savings were calculated using estimates and assumptions. The Government has been unable to verify substantially the methodology employed in the assumptions and therefore the Committee recommends that the Deputy Minister closely reviews the implementation of the Measure, if passed, to ensure that a funding gap does not emerge in the case of lower than expected savings and higher than expected participation rates.

Implementation of the Proposed Measure

14. The roll out of the Measure is intended to be staggered by the adoption of banding and phasing arrangements. Local authorities have placed themselves in the band that best describes their current state of progress and may choose to move up from the band they are in as time moves on. [ROP 7/11/08 14.40-14.45pm] However, all local authorities are required to achieve 30 courses by 2012 through a progressive target that increases the minimum level by 2 courses each year until 2012.

15. The Finance Committee notes Estyn's concerns that the 2009 commencement date was unrealistic, given the arrangements that are needed to enable learners to choose their courses. The Deputy Minister assured the Committee that those concerns had been alleviated by the banding and phasing arrangements that are now in place [ROP 7/11/08 14.40 – 14.45]

16. The Finance Committee trusts that the phased implementation will be closely monitored by the Deputy Minister as the estimates and assumptions made in calculating the financial implications of this Measure are tested.

Transport Costs

17. The Deputy Minister recognises that additional transport costs will be incurred as a result of this Measure and has estimated the financial implications of learner travel provision.

18. The Finance Committee re-iterates that it is vital that the financial implications of any proposed legislation are fully assessed at the outset and seeks assurance that the estimates for travel costs are robust.

Funding Methodologies for Collaboration

19. The Deputy Minister stated that the Measure would 'drive co-operation and collaboration' [ROP 2/10/08 p108] as institutions have to come together in order to provide the necessary number of course choices. The cost of this collaboration is not included in the Explanatory Memorandum for this proposed Measure but the Deputy Minister recognises that there are cost implications and has allocated £75,000 per network to fund this work.

20. The Finance Committee is concerned that the allocation of a standard amount per network may prove to be insufficient in larger local authorities as some costs are variable. Given the importance of collaboration and co-operation to the success of the Measure, it is vital that the level of funding to local networks is sufficient to ensure effective administration of the process.

21. The Finance Committee also considers it vital that the Welsh Assembly Government and the local networks communicate effectively throughout the implementation process and beyond. The Deputy Minister stated that DCELS have been working closely with local authorities. The Finance Committee would underline the importance maintaining a close working relationship in the future.

Conclusion

22. The Finance Committee is disappointed that the Explanatory Memorandum says so little about the costs of implementing this proposed Assembly Measure. The Committee accepts that the Government might wish to accommodate the implementation of the Measure from within resources it has already made available and notes that this is a perfectly reasonable approach to follow. But the Government needs to demonstrate that this is realistic and achievable. Several elements of the calculations supporting the costs of this proposed Measure have been based on estimates and assumptions but, despite 2 further papers, the Government has not explained what these estimates and assumptions are.

23. The Committee is therefore unable to examine these calculations and has to conclude that it cannot reliably assess the impact of the proposed Learning and Skills (Wales) Measure. **It considers it has little alternative but to recommend that the stage one debate on the general principles of the**

Measure is not brought forward until this information is available. It will not be until then that the Committee, and in turn Assembly Members generally, will be able to assess the financial impact of the Measure.

Given the tight economic and budgetary situation the Assembly is currently facing, proceeding before this information is presented would seem irresponsible and would be inconsistent with the Minister for Finance and Public Service Delivery's statement that one of his priorities is to ensure that that expenditure is used wisely and that we get value for the Welsh pound. [ROP FinC 9 October para 18.]

25. Moreover, from what the Committee has seen about the calculations and the assumptions involved, little if any work appears to have been done on ascertaining the true costs of implementing such a major new venture in education. In particular we are concerned that the needs of rural areas, staff retraining and the development of new and extended welsh medium provision have not been evaluated in a proven way. Furthermore there is the possible need for additional resources to provide residential training in rural areas.

Angela Burns
Chair, Finance Committee

Subordinate legislation Committee's Letter and Report on the Proposed Learning and Skills (Wales) Measure 2008 Dated 11 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%20Trawsgrifiad%20%28PDF%2C%20143kb%29>

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 A⁹⁸.

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 14-19TPF1FPT 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

⁹⁸ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=106728&ds=4/2008>

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 B⁹⁹ 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

⁹⁹ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm?act=dis&id=106728&ds=4/2008>