

Explanatory Memorandum to the Operation of the Local Curriculum (Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the 14-19 Learning Pathways team within the Department for Education and Skills, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Operation of the Local Curriculum (Wales) Regulations 2013.

Huw Lewis AM
Minister for Education and Skills
16 July 2013

1. Description

These Regulations ensure that existing education related legislation applies fairly to pupils or students following a course of study at more than one location under provisions in the Learning and Skills (Wales) Measure 2009. Learners undertaking courses of study away from their registered setting are referred to as 'local curriculum students'.

Much of education related legislation assumes that a pupil or student will receive all, or most, of their education at their main educational setting where they are registered; as a consequence local curriculum students would not be covered by a range of various duties and obligations on the other institution / educational setting.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The Regulations are being made under sections 46 and 48(2) of the Learning and Skills (Wales) Measure 2009, and amend existing education legislation as follows:

Section 43 of the Education (No. 2) Act 1986 provides that those involved in the government of further education institutions must take such steps as reasonably necessary to ensure freedom of speech for their students is protected. Regulation 3(a) now extends this duty to local curriculum students following a course of study at the institution.

Section 18(3)(c) of the Further and Higher Education Act 1992 provides that it is within the powers of a further education corporation to provide education services where those services arise from an idea of a student at the institution. Regulation 3(b) provides that the term student will also include local curriculum students following a course of study at the institution.

Section 44(2A) of the Further and Higher Education Act 1992 provides that the institution must be open to act of collective worship at least one day a week for persons receiving education at the institution. Regulation 3(b) ensures this will also apply to local curriculum students following a course of study at the institution.

Section 85B of the Further and Higher Education Act 1992 enables students attending an institution within the further education sector to be searched by a member of staff to see if they are in possession of certain articles such as knives or blades, or an offensive weapon. Regulation 3(b) ensures this will also apply to local curriculum students following a course of study at the institution so that they may also be searched.

Section 85C of the Further and Higher Education Act 1992 provides that a member of staff at a further education institution may use reasonable force to prevent a student at the institution from committing an offence, causing personal injury or damage to the

property of any person, or prejudicing the maintenance of good order and discipline at the institution or among any of its students, whether during a teaching session or otherwise. Regulation 3(b) extends this power in respect of local curriculum students following a course of study at the institution.

Sections 20 and 22 of the Education Act 1994 place governing bodies of further education institutions under certain duties in relation to the operation of student unions. Specifically such governing bodies have a duty to take such steps as are reasonably practicable to secure that any students' union for students at the establishment operates in a fair and democratic manner and is accountable for its finances. Regulation 3(c) extends this duty in respect of local curriculum students following a course of study at the institution who are members of the students union.

Section 45 of the Education Act 1997 places schools and institutions within the further education sector under a duty to ensure that persons attending such an institution have access to guidance materials, and a wide range of up-to-date reference materials, relating to careers education and career opportunities. Regulation 3(d) ensures this duty will also apply in respect of local curriculum students following a course of study at the institution.

Unless stated otherwise in the Regulations, under Regulation 4 a local curriculum student who receives part-time education at a school will be regarded as a pupil of that school for the purposes of the Education Act 1996. Therefore, such students will enjoy the same rights and obligations as non-local curriculum students registered at the school.

Section 316 of the Education Act 1996 provides that a child with special educational needs (SEN), but who does not have a SEN statement prepared by the local authority, must be educated at a maintained school. Regulation 5 ensures this duty will also apply to local curriculum pupils following a course of study at the school.

Section 317(1)(c) of the Education Act 1996 provides that in a community, foundation, voluntary or maintained nursery school the governing body must secure that teachers in the school are aware of the importance of identifying and providing for those pupils with SEN. Regulation 6(a) ensures this duty will also apply to local curriculum students following a course of study at the school.

Section 451(1) of the Education Act 1996 prohibits the charging for education provided during school hours at any maintained school to a registered pupil. Regulation 6(a) ensures this prohibition will also apply to local curriculum students following a course of study at the school.

Section 453 of the Education Act 1996 prohibits charging in respect of any entry of a registered pupil at a maintained school for a public examination. Regulation 6(a) ensures this prohibition will also apply to local curriculum students following a course of study at the school.

Section 454(1), (3) and (4) of the Education Act 1996 prohibit charging a residential pupil at a maintained school for incidentals such as materials, books equipment used in connection with education for which no charge may be made or provided for the

purpose of an exam. They also prohibit charging for transport provided to a registered pupil at a maintained school where it is related to education for which no charge may be made for the purpose of an exam. Regulation 6(a) ensures this prohibition will also apply to local curriculum students following a course of study at the school.

Section 457(3) of the Education Act 1996 requires a governing body and local authority to decide upon and keep up to date a charging and remissions policy for school pupils. Regulation 6(a) ensures this duty will also apply to local curriculum students following a course of study at the school.

Section 460 of the Education Act 1996 provides that voluntary contributions and charges and requests or invitations for those for the benefit of school or any school activities are permitted provided it is clear there is no obligation to pay and pupils will not be treated differently if their parents do not contribute. Regulation 6(a) ensures this will also apply to local curriculum students following a course of study at the school.

Section 452(6) of the Education Act 1996 reinforces the prohibition of charging for education outside of school hours on a residential trip for a registered pupil at the school. Regulation 6(1)(a) and 6(1)(b) ensures this prohibition will also apply to local curriculum students following a course of study at the school.

Section 455(1) of the Education Act 1996 allows the charging for education provided at a maintained school for a registered pupil at the school other than for education for which no charge may be made under section 451. It also allows charging in respect of a registered pupil at a maintained school for an examination other than prohibited under section 453(1). The section also allows for charging for transport provided to a registered pupil at a maintained school other than when no charge may be made under section 454 or under section 509 Education Act 1996 or the Learner Travel (Wales) Measure 2009. Regulation 6(1)(a) and 6(1)(b) ensures these powers will also apply to local curriculum students following a course of study at the school.

Section 62 of the School Standards and Framework Act 1998 provides local authorities with powers to intervene in a school to prevent a breakdown of discipline when the behaviour of registered pupils at a school or any action taken by them or their parents is such that the education of any registered pupils at the school is severely prejudiced. Regulation 6(1)(c) ensures this power applies equally in respect of local curriculum students following a course of study at the school.

Section 29(3) of the Education Act 2002 sets out additional functions of governing bodies. A governing body can require registered pupils to attend at any place outside school premises for the purpose of receiving any instruction or training included in the secular curriculum for the school. Regulation 6(1)(d) ensures this would apply equally in respect of local curriculum students following a course of study at the school.

Section 462(2) and 457(4) of the Education Act 1996 provide that a school's remissions policy must provide for complete remission of the cost of residential trips if parents are in receipt of certain prescribed benefits and no charge under section 451 of the Education Act 1996 may be made. Regulation 6(2) ensures will apply to local curriculum students following a course of study at the school.

Section 462(3) of the Education Act 1996 provides that for the purposes of chapter 3 of the Education Act 1996 a child will be regarded as prepared by a school for a public examination if any part of that education has been provided for that pupil at the school. Therefore Regulation 6(3) ensures the prohibition against charging pupils for any such education will apply equally to local curriculum students following a course of study at the institution.

Section 317(4) of the Education Act 1996 ensures that where there is a child with SEN being educated at a community, foundation, voluntary or maintained nursery school those at the school who make SEN provision must, subject to some exceptions, ensure that the child engages with the activities of the school together with children who do not have SEN. Regulation 7(a) ensures this will also apply to local curriculum students following a course of study at the school.

Section 45 of the Education Act 1997 requires persons attending educational institutions to be provided with careers information and guidance. Regulation 7(b) ensures this will also apply to local curriculum students following a course of study at the institution.

Section 434 of the Education Act 1996 requires the proprietor of the school to keep a register of all persons who are pupils at the school in accordance with regulations. Regulation 8(a) ensures this will not apply to local curriculum pupils following a course of study at the school.

Section 52 of the Education Act 2002 provides that the head teacher of a maintained school may exclude a pupil from a school for a fixed period or permanently. Regulation 8(b) clarifies that this power remains with the head teacher of the school where the local curriculum pupil is registered.

Section 450 of the Education Act 1996 prohibits charges in respect of a person's admission to a maintained school. Regulation 9 ensures this will apply equally to students following a course of study in the local curriculum – even if that person is of any age over the compulsory school age and receiving part time education.

Section 80 of the Schools Standards and Framework Act 1998 allows a governing body to decide whether to provide part time education for persons over the compulsory school age or; full time education for persons over the age of 19. Regulation 10 ensures this will not apply to part time education relating to local curriculum students following a course of study at the school.

Part 3 of the School Standards and Framework Act 1998 deals with school admissions and specifically the code of practice issued by Welsh Ministers. Regulation 11(1) ensures that arrangements for local curriculum pupils to follow a course of study at a school are not to be taken as part of the school's admission arrangements for the purposes of Part 3.

Section 86 and 86A of the School Standards and Framework Act 1998 allow for parents to express a preference to the school at which they wish their child to be educated. Regulation 11(2) ensures this section does not apply so as to allow parents

to express a preference for a place to study a particular course of study within the local curriculum.

Section 89A of the School Standards and Framework Act 1998 relates to the determination of pupil admission numbers of a school. Regulation 11(3) ensures that local curriculum pupils following a course of study at the school will not be included in those admission numbers.

Section 94 of the School Standards and Framework Act 1998 makes arrangements for parents to appeal against a decision made by the local authority in respect of school preference. Regulation 11(4) ensures this does not apply in relation to arrangements made to allow local curriculum students to follow a course of study in the local curriculum at a particular place.

Section 89 and 92(3)(b)(d) of the Education Inspections Act 2006 relate to the enforcement of discipline and the conduct of pupils outside school sessions. They require the school to adopt certain policies and to adopt measures to enforce them including detention outside school hours. Regulation 12 ensures that such policies and measures may be applied equally by the school to local curriculum students following a course of study at the school.

Sections 85(1), (3)(b) and (4) and 91(1),(5)(b) and (6) of the Equality Act all relate to the responsible body of a school or institution on determining pupil admissions must not discriminate or victimise a person who has applied for admission as student. Regulation 13 ensures that these duties will apply equally to local curriculum students following a course of study at the institution.

This instrument will follow the negative procedure.

4. Purpose and intended effect of the legislation

The Operation of the Local Curriculum (Wales) Regulations 2013 ensure that potential for unequal treatment of learners is removed through amending existing education legislation to take into account the nature of local curriculum students.

5. Consultation

A full 12 week consultation period was undertaken on draft Regulations aimed at local authorities, governing bodies of maintained schools and institutions within the further education sector, head teachers of maintained schools and other interested parties. The consultation was launched on 8 January 2013 and was open for responses until 2 April 2013. A total of 5 questions were set out in a pro-forma style document, provided by an online form.

There was broad support for these largely technical Regulations and recognition that they need to be brought into force. Exceptions to this support related to the need for Regulation 3(b) to extend the powers of search at further education institutions, where one respondent objected on the grounds that instances which might require such action generally never arose. The Welsh Government recognises that many of the instances behind these Regulations do not arise in practice, and considers it prudent

to extend such powers to ensure equity in the treatment of learners should that eventuality arise. The only other objection related to a possible misunderstanding behind the consultation document's presentation of Regulation 8(b), and the powers of head teachers to exclude local curriculum students. This has been clarified in this Explanatory Memorandum, highlighting that it is the head teacher of the school at which the local curriculum student is registered that retains this authority.

Respondents provided wider commentary around the issues raised by the Regulations, including the need for training of further education staff. As noted in the Welsh Government response to the consultation, each college determines its own staff development budget and its own training plan. It is, therefore, the responsibility of individual colleges to take into account of the needs of 14-16 learners in their staff development plans, and make training provision accordingly.

Other comments questioned the need for further guidance. There are no current plans to issue further guidance, beyond the consultation document, the Welsh Government response to the consultation, and this Explanatory Memorandum, as it will not be possible to take account of every eventuality. In applying the Regulations the Welsh Government advocates sharing best practice to overcome any practical problems, as suggested by respondents, and which is largely the case in the management of local arrangements to date. Guidance on the operating protocols for cooperative provision is included in the '*Learning and Skills (Wales) Measure 2009: Local Curriculum for Pupils in Key Stage 4 Guidance*' document.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been produced for these Regulations as the related elements of educational legislation are already in place. The Regulations provide the necessary clarity for the treatment of local curriculum students undertaking a course of study at an institution which is not their home institution, to ensure equity of treatment. No further impact on schools and colleges is foreseen as a consequence of the Operation of the Local Curriculum (Wales) Regulations 2013.