

PROPOSED LEARNING AND SKILLS (WALES) MEASURE

Explanatory Memorandum to the Proposed Learning and Skills (Wales) Measure

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills (DCELLS) of the Welsh Assembly Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Learning and Skills (Wales) Measure would be within the legislative competence of the National Assembly for Wales.

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Deputy Minister for Skills

7 July 2008

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1. Description

1.1 This Measure will make law for the education of school pupils and young people in education or training aged 14-19¹ 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.

1.2 The statutory provisions provide the means by which a legal framework can be put in place that will reflect 14-19 Learning Pathways policy and provide the means to develop that legal framework as policy develops.

1.3 The key purpose of this Measure is to create a right for learners aged 14-19 in Wales to elect to follow a course of study from a local area curriculum, known already in 14-19 Learning Networks as an 'Options Menu'. The local area curriculum will contain a wide range of options of study, both academic and vocational, across the learning domains². It will be possible for 14-19 year olds to study outside their main learning setting.

1.4 The Measure will enable regulations to be made by Welsh Ministers that will specify the minimum number of courses of study to be selected for inclusion within the local curriculum as a whole. Regulations will also state the minimum number or volume of vocational courses of study to be included in a local curriculum. By regulation the Welsh Ministers may also specify a maximum number of courses of study a pupil has the right to elect to follow.

1.5 The Measure specifies the grounds on which a Head Teacher or Principal may decide that, in certain circumstances, a learner is not entitled to follow a course they had elected to study. The Measure also enables regulations to be made as to the making of these decisions.

1.6 The Measure will place a duty on Local Education Authorities in Wales in relation to learners aged 14-16, and on the Welsh Ministers for those learners aged 16-19, to form collaborative local area curricula. A duty will be placed on Governing Bodies and Head Teachers of Maintained Schools and Governing Bodies and Principals of Further Education Institutions to assist a Local Education Authority or the Welsh Ministers, as appropriate, in planning the local area curriculum, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers. Local Authorities will also be under the same duty to assist the Welsh Ministers.

1.7 The Measure further requires Local Education Authorities and the Governing Bodies of Schools and Institutions within the Further Education sector to seek to maximise the availability of courses of study within local

¹ That is those aged 14 up to (but not including) 19th birthday.

² The learning domains are; (a) mathematics, science and technology, (b) business, administration and law, (c) services to people, (d) arts, media, culture and languages, and (e) humanities, social sciences and preparation for life and work.

curricula. Provisions within this section of the Measure enable the Welsh Ministers to issue guidance and directions to assist in achieving this aim.

1.8 In relation to youth support services, the Measure makes provision for Local Authorities and Governing Bodies of Maintained Schools and Further Education Institutions so that they may incur expenditure, employ staff, and enter into agreements for the supply of goods and services.

2. Legislative background

2.1 The Education and Inspections Act 2006 provided the National Assembly for Wales with a framework power for Wales under Section (178(1) (d),(g) and (h). The power was converted by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 to enable the Assembly to legislate by Measure in relation to the areas relevant to the 14-19 Learning Pathways policy.

2.2 The enabling powers are in the Government of Wales Act 2006, Schedule 5, Field 5: Education and Training, Matters 5.4, 5.7 and 5.8. This gives the National Assembly for Wales legislative competence to pass this Assembly Measure.

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.

3. Purpose and Intended Effect of the Legislation

3.1 This Measure builds on the policy intentions set out by the Welsh Assembly Government in relation to 14-19 Learning Pathways in the *Learning Country: Learning Pathways 14-19 2002*, and *The Learning Country: Vision into Action 2006* that: '95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'.

3.2 The Learning and Skills (Wales) Measure 2008 will contribute directly to the achievement of the aims stated in the above documents by creating a statutory basis for 14-19 Learning Pathways. The Learning Pathways policy has the potential to transform provision and support for learners, raise achievement and attainment, prepare young people for high skilled employment or higher education and enable Wales to compete in Europe in the 21st century. Encompassing the basic principles of this policy in a legal framework will ensure that these policies will be implemented in a consistent way to the benefit of 14-19 year old learners across Wales. The Learning Pathways policy utilises a blend of 6 key elements;

- Individual Learning Pathways to meet the needs of each learner;
- Wider choice and flexibility of programmes and ways of learning from a collaborative options menu;
- A Learning Core which runs from 14 through to 19 wherever young people are learning and which includes skills, knowledge, understanding, attitudes and values and common experiences;
- Learning coach support;
- Access to personal support;
- Impartial careers advice and guidance.

3.3 The combination of these elements will ensure that learners will receive an appropriate balance of learning experiences that best meet their individual needs. The key statutory elements of this policy are the creation of local curricula that contain a wide range of courses and opportunities and a right for learners to choose courses of study from a local curriculum. Courses can be delivered outside of the learners' usual learning setting. It also provides more powers for local authorities to provide learners with the support and guidance that is necessary for them to achieve their full potential.

3.4 Existing legislation does not ensure that learners have an entitlement to access the 6 elements established within Learning Pathways. The key issues addressed, therefore, by the Measure are outlined below.

3.5 Curriculum Provision 14-19

3.5.1 *To secure entitlement for learners to a range of options from a collaborative option menu including options outside their main learning setting.*

An entitlement to access a wide range of options across Wales can only be secured via an Assembly Measure. In the absence of a Measure, access to the envisaged options menus could be limited and inadequate in scope. It could not be guaranteed that an individual learner's need would be satisfactorily met across Wales as there would remain an option for providers in some areas to opt-out of the 14-19 Learning Pathways policy to the detriment of learners.

3.5.2 To place a duty to consider co-operation on School Governing Bodies, LEAs and Governing Bodies of Further Education Institutions in maximising availability of courses of study included in a local curriculum.

Schools and further education institutions will need to co-operate to ensure they meet requirements in respect of the formation of local curricula. Efficient and effective provision of a wide range of choices for learners in the form of the envisaged option menus will drive greater co-operation between learning providers.

This section seeks to challenge schools and further education institutions to achieve more than the minimum where appropriate. It places a duty on local education authorities and the governing bodies of maintained schools and further education institutions to consider cooperation in relation to *maximising* the availability of courses of study in a local curriculum. Should these parties conclude that entering into cooperation arrangements would aid this objective then they must seek to do so.

3.5.3 To secure access to a wide range of experiences from the Learning Core.

The Learning Core will apply to young people in Wales from the age of 14 to 19. It is made up of minimum requirements plus enhancements.

As a minimum, it consists of the skills, knowledge, understanding, attitudes, values and experiences that all learners need to prepare them for further learning, employment, personal fulfilment and their contribution to our bilingual and diverse society, regardless of the Learning Pathway that a learner chooses to follow.

Learners should also have access to enhancements to the minimum requirements to develop their core learning for their chosen pathway and/or to fulfil an interest that will help enrich their lives.

Learners will also be entitled to a wide range of experiences and activities which will help enable them to develop Key Skills.

3.5.4 Provision to include a definition of the age range to be covered.

This would allow Further Education institutions and work based learning providers to engage in co-operative provision for learners from 14-16 as well as allowing for learners who may not have completed their studies by the age of 19.

3.6 Learner Support

3.6.1 The 6 elements of the Learning Pathways policy are inter-related and the goal of ensuring that “learners will receive an appropriate balance of

learning experiences that best meet their individual needs” can only be met if learners receive the required level of support in their development.

3.6.2 Learning Coach support for learners is essential, whether it is provided by a specific individual, or a function carried out by a team, to provide significant support to learners to:

- Help them develop learning skills
- Make best use of and develop their learning styles
- Maximise their development in a variety of areas of intelligence, including emotional intelligence.

3.7 The objectives of the Measure are:

- to place a duty on Local Education Authorities in Wales to form local curricula for learners aged 14-16, and on the Welsh Ministers for learners aged 16-19 that contains a range of option choices across the specified learning domains;
- to enable 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;
- to 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;
- to 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;
- to 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 in planning local area curricula, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers;
- to 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;
- to enable Welsh Ministers to issue guidance and directions in relation to joint working, co-operation and collaboration;
- to give Welsh Ministers the power to amend learning domains;
- to enable Welsh Ministers to make regulations as to the making of requests and decisions in the determination of a pupils lead learning setting.

3.8 Explanation of the Provisions

The provisions in the Measure are explained in the Explanatory Notes at Annex 1.

3.9 Application

The Measure will apply to all of Wales.

4. Consultation

4.1.1 Consultation on the 14-19 phase effectively began with “The Learning Country: A Paving Document” in September 2001. The consultation document “The Learning Country: Learning Pathways 14-19” issued by the Welsh Assembly Government in November 2002 provided significant scope for consultation, debate and discussion on this policy. The consultation process has been supported by a series of regional conferences; by the construction of representative working groups and field activity by Welsh Assembly Government staff. The first 14-19 Learning Pathways Guidance was published in July 2004, and updated in April 2006. Further guidance has been issued on specific aspects of Learning Pathways such as Learning Coach support.

4.1.2 Formal consultation on the Proposals for a Learning and Skills (Wales) Measure 2008 commenced on 15 January 2008 and closed on 29 April 2008. Ninety one responses were received from a range of stakeholders. Consultation also took place within the Skills That Work for Wales consultation events, and, in addition, a series of consultation events were held by each Network. The responses and feedback received have been used to inform changes to the proposed Measure.

4.1.3 Whilst the consultation sought specific views on the proposed Measure, many respondents chose to take this opportunity to comment more generally on the policy underpinning 14-19 Learning Pathways and the practical implementation of that policy. As a result there were few direct comments on changes required to the Measure.

4.1.4 In general, the principle of legislating to support implementation of the policy was supported, with there being particular support for supporting parity of esteem for vocational routes. Respondents felt more clarity was needed in some areas, and where a legislative approach was appropriate, for instance in prescribing the grounds for disenfranchisement, changes have been made to the Measure. In the vast majority of cases, however, guidance to be produced to support policy implementation will be a more appropriate route to give providers the practical information required. A summary report and the consultation responses are available on the Welsh Assembly Government website.

4.2 Key changes to the draft Measure

4.2.1 The main changes made to the Measure following the consultation process are:

- *Head teacher's or principal's decision as to entitlement.*

There was broad support for Head teachers or Principals to make decisions on entitlement, but requests for there to be clarity on the grounds for making such decisions. To address this, the grounds on which a Head teacher or Principal may decide that a pupil/student is not entitled to follow a course of study and alternatively the grounds on which a Head teacher or Principal may decide to remove a pupil's/student's entitlement to follow a course of study, are now included upon the face of the Measure. A power is included in the Measure for the Welsh Ministers to change the grounds in future if required.

- *Formation of the local curriculum for pupils in key stage 4/ students aged 16-18.*

Respondents expressed some concern over the definition of a local area, which has implications for the formation of the local curriculum for a local area and current Network structures. A number of local authority areas currently organise learning provision within cluster arrangements that take account of both local provision and the geography of the area. Such cluster arrangements can provide an effective structure for organising local curricula and the Measure has therefore been amended to allow for such arrangements. Where there is more than one local curriculum, each will match to particular schools or colleges.

- *Pupils' choices of local curriculum*

In responses that discussed the setting of minimum course numbers for local curricula, consultees indicated that clarity was needed on what constituted a course. The Measure now enables the awarding of a point score to courses. This facilitates the setting of maxima for learner entitlement. It also allows for specificity in relation to what constitutes a choice in terms of the size of qualification.

- *Delivery of local curriculum entitlements: joint working (Maximising availability of courses of study included in a local curriculum)*

Institutions are required to co-operate in ensuring the minimum entitlement is met for learners. A number of responses identified the need for guidance on the meaning of co-operation and considered that a duty to consider co-operation would not be a strong enough approach. The definition of co-operation within the Measure has been extended to include more formal collaboration arrangements. This section places a duty on local education authorities and governing bodies of maintained schools and further education institutions to consider cooperation in relation to *maximising* the availability of

courses of study in a local curriculum. Should parties conclude that entering into cooperation arrangements would aid this objective then they must seek to do so.

- *Identification of local curriculum for the learner*

Some concerns were expressed about ensuring a duty of care for learners and that there was clarity on which institution was responsible for which pupil. Greater clarification is now made in the Measure to the importance of the decision to identify the school or FEI from whose local curriculum a pupil is to be entitled. This is in order to draw out the fact that the decision as to “relevant school or institution” has to be the first stage in the decision making sequence that ultimately leads to the establishment of an entitlement to follow a course of study.

- *Special schools*

The application of the Measure to those with Special Educational Needs was queried by some respondents. The Measure recognises the circumstances in which special schools operate. For this reason pupils of special schools are not included in local curriculum provisions within the Measure. Provision is, however, made in this section for regulations to be made that would allow for the application of the local curriculum provisions to be made to children who are registered pupils of special schools or attend institutions which provide education wholly or mainly for persons with a learning difficulty.

- In addition, the power to suspend local curriculum has now been removed. The flexibility that was provided by this provision is now achieved through regulations relating to the formation of the local curriculum.

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.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment for this measure is at part 2.

PART 2 - Regulatory Impact Assessment

7. Options

7.1 Introduction

7.1.1 The development of the 14-19 Learning Pathways policy originates with “The Learning Country” published in 2001. A full consultation on policy development was conducted in 2002. Non statutory policy guidance was first issued in 2004 and since then all Local Education Authorities have received funding for the establishment of 14-19 Learning Networks based upon local authority area boundaries. The development of 14-19 Learning Pathways is a key element within the education strategy for Wales. The aim of 14-19 Learning Pathways is to transform provision and support for learners, raise achievement and attainment, prepare young people for high skilled employment or higher education and enable Wales to compete in Europe in the 21st Century.

7.1.2 Learners in the 14-19 phase need to be provided with a strong foundation that prepares them for adult and working life. At present too many young people are not fully engaged in their learning experiences. This includes some learners who currently perform well within the existing system. The 14-19 Learning Pathways policy recognises that a blend of 6 key elements is essential to support the policy. These are:

- Individual Learning Pathways
- Wider Choice and Flexibility
- Development of a Learning Core
- Learning Coach Support
- Personal Support
- Impartial Careers Advice and Guidance

7.1.3 Table 7.1.4 examines the four key objectives that need to be met to fulfil the aims of the policy.

Table 7.1.4

Objective	Rationale
<p>1. Promote cooperation and collaboration between providers of education in order to secure an options menu that offers a wide range of choices and opportunities to learners in all parts of Wales.</p>	<p>The provision of wider choice can be secured via providers working together. It would be very difficult for individual providers to offer the range of choice envisaged by working alone. By working in partnership providers will be able to ensure that learners have an appropriate range of choice. With this approach colleges, schools, private training providers and the voluntary sector are encouraged to cooperate and where appropriate formally collaborate in the provision of an options menu for learners. The options menu provides a learner with a range of courses and subject options that may be studied within an area. It should be constructed in such a way as to meet national, regional and local skills needs and demand.</p>
<p>2. Secure entitlement for learners to a range of options from the options menu, including from outside of their main learning setting.</p>	<p>Wider choice can assist in raising participation, achievement and attainment for learners of all abilities. An options menu achieved by cooperation and collaboration will assist in promoting this. Provision of an options menu will not however of itself ensure that learners have an entitlement to study an appropriate range of options. A degree of specificity is required to ensure that the concept of a learner's entitlement to choice is realised. The degree of specificity does, however, have to be such that local areas have the flexibility to respond to local skills needs and learner demand.</p>
<p>3. Secure access to a wide range of experiences from the learning core.</p>	<p>The learning core includes key skills, personal and social education, work related education and community service. It is closely related to the developments of the core of the Welsh Baccalaureate Qualification. Access to, and recognition of, such wider experiences is seen as important in promoting participation and achievement.</p>
<p>4. Secure access to support not already covered in previous legislation, principally, learning coach support and personal support.</p>	<p>Wider choice can only assist in ensuring that learners can fulfil their potential when supported by high quality advice and support. The Learning Coach function seeks to support learners 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. For a significant number of learners in the 14-19 age range personal issues represent a real</p>

Objective	Rationale
	and significant barrier to learning, on a temporary or long term basis. Personal support is therefore for many a key way of seeking to overcome these barriers.

7.1.5 The costs of reforming the experience for learners within the 14-19 range have been directly supported by specific funding for the 14-19 Learning Pathways programme. In 2007-8 specific grant funding reached £32.5 million. £20.6 million was provided as revenue expenditure, the majority of which was distributed through local authorities to the 22 local 14-19 Networks. The remaining £11.9 million constituted capital expenditure. In addition there has been specific grant funding for the Welsh Baccalaureate a development closely associated with the 14-19 phase.

7.1.6 In the medium to long term 14-19 Learning Pathways is a mainstream development that will utilise mainstream funding, patterns of expenditure will adjust to sustain activity It is essential that implementation of the policy occurs on the most cost effective basis possible.

7.1.7 At a national level increases in costs associated with some cooperative and/or collaborative activities will to some degree be offset by declining numbers within the 14-19 age range. A -6% population change is projected for the 14-19 age range between 2008 and 2012³.

7.1.8 Three options are considered in relation to the achievement of the policy aims and the achievement of the facilitating objectives considered in Table 8.1. It is against these that each option should be evaluated. The three options are:

- Option 1: To do nothing.
- Option 2: To continue to evolve and implement 14-19 Learning Pathways Policy without recourse to legislation.
- Option 3: Introduce an Assembly Measure.

7.2 Option 1: To do nothing.

7.2.1 Non statutory guidance on the implementation of Learning Pathways policy has been provided by the Welsh Assembly Government. This non statutory guidance, allied with specific grant funding has led policy implementation to date.

7.2.2 The Annual Report of Her Majesty's Chief Inspector of Education and Training in Wales 2005/7 noted that:

³ Source 2006 based population projections for Wales, Government Actuary's Department (GAD)

“The introduction of Learning Pathways 14-19 means that learners should be able to choose from an increasing range of courses that better meet the needs and ambitions of all pupils. At present, very few schools are providing a wide enough range of options at either age 14 or 16..... It is unlikely that schools will be able to increase this range of options by working alone. To increase the options for their learners, individual schools need to work better with further-education colleges and other secondary schools or work-based learning providers.

7.2.3 If the status quo remained without statutory implementation:

- It is possible that continued progress could be made in relation to 14-19 and that the 6 elements could be developed further. Any progress would be dependent on the will of LEAs, schools, further education institutions and other providers to further develop policy implementation in the absence of an evolving national strategic steer.
- As at present no legal obligation on schools, governing bodies or further education institutions to consider cooperation or collaboration in their provision for 14-19 year olds would exist. Many providers of education would continue to operate independently. A number of providers that currently work together might choose to discontinue doing so.
- A consequence of maintaining the current level of cooperation between organisations is likely to be a failure to widen learner choice beyond its current level. A reduction in the level of cooperation would most likely result in a narrowing of learner choice.
- Developments would not take place evenly and current variations in provision would become further embedded. This would most likely be the case in terms of both curriculum development and learner support. This would raise serious equality of opportunity issues.
- Developments would be unlikely to keep pace with changes in educational theory and practice.
- The potential for improvements in participation, achievement and attainment would be less likely to be realised.
- The goal of *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'* would be less likely to be met.
- There would be little scope for the realisation of economies of scale that might result from shared provision.

7.2.4 For these reasons it is considered that the option of “doing nothing” is not acceptable. It is the course of action (or inaction) least likely to achieve the stated policy aims.

7.3 Option 2: To continue to evolve and implement 14-19 Learning Pathways Policy without recourse to legislation.

7.3.1 Option 2 would represent a continuation of the current approach to the implementation of the 14-19 Learning Pathways policy. It would involve the continued development and production of non statutory guidance; the use of specific transitional grant funding and persuasion.

7.3.2 Many of the potential issues confronted by option 1 remain for option 2 although they are to some degree likely to be mitigated by actions that would be undertaken under option 2.

- It is likely that continued progress would be made under this option. Progress would be dependent upon the commitment of LEAs, schools, further education institutions and private training providers to the policy. Non statutory guidance would provide an appropriate strategic steer and developments would be assisted by specific grant funding.
- LEAs, schools and further education institutions would be under no legal obligation to consider cooperation or collaboration in their provision for 14-19 year olds. The power of Welsh Ministers to address the problem of limited cooperation and collaborative working would be very limited.
- It is probable that limited progress would be made toward widening choice; there would be little incentive to use mainstream funding to widen learner choice.
- It would remain extremely difficult to ensure equality of opportunity for 14-19 year olds across Wales. Unacceptable variations in access to curriculum provision and learner support would be likely to remain and possibly widen.
- The potential for improvements in participation, achievement and attainment would be more likely to be realised than in option 1 but the likelihood of their full and complete realisation would remain low.
- The goal of *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'* would be challenging to meet.
- There would be limited scope for securing potential economies of scale from shared provision.

7.3.4 Option 2 presents a continuation of the existing approach to 14-19 Learning Pathways. Significant progress has been made but it has been a slower process than might be ideally desired. "The Learning Country: Vision into Action" noted that despite progress "Collaboration in 14-19 education and training between schools, further education colleges and work based learning providers is weak." It is felt that this fundamental issue has not been, and could not be, fully addressed under option 2.

7.4 Option 3: Introduce an Assembly Measure

7.4.1 An Assembly Measure is the most likely route through which the policy objectives can be achieved. The measure provides flexibility for necessary changes to the detail of the policy in the future.

7.4.2 Option 3 would therefore:

- Ensure that schools and further education institutions cooperated with the LEAs and Welsh Ministers in the construction of option menus.
- Ensure that LEAs, schools and further education institutions consider cooperation\collaboration in pursuit of the objective of maximising access to courses of study contained in the local curriculum.
- Provide Welsh Ministers with the power to direct a local authority, a governing body of a maintained school and the governing body of an institution within the further education sector to enter into cooperative\collaborative arrangements.
- Secure access to wider curriculum choice for 14-19 year old learners across Wales including a learning core.
- Establish a Welsh legislative framework which can be developed to meet changing educational needs 14-19
- Be most likely to facilitate the aim that *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'*

7.4.3 An Assembly Measure would assist greatly in achieving the policy goals attributed to 14-19 Learning Pathways.

8. Costs and Benefits

8.1 A summary examination of the key general costs and benefits associated with each option is given in Tables 8.1.1 to 8.1.3. These are directly related to the objectives set in Table 7.1.4. This is followed by a summary examination in Table 8.1.4 of each of the key proposals contained within the Measure and associated costs and benefits.

Table 8.1.1 Option 1: Do Nothing

Objective	Comment	Cost	Benefit
<p>1. Promote cooperation and collaboration between providers of education in order to secure an options menu that offers a wide range of choices and opportunities to learners in all parts of Wales.</p>	<p>No further action would be undertaken to secure this objective.</p>	<p>It is highly unlikely that a significant degree of cooperation and collaboration would be achieved.</p> <p>A consequence of this would be:</p> <ul style="list-style-type: none"> • limited options menu (local curriculum) development. • Limited removal of duplication. • Sub optimal allocation of resources. <p>Potential for negative publicity, especially considering that there may be significant loss of ground.</p>	<p>There would be a cost saving in terms of the saving of transitional specific grant funding for 14-19 Learning Pathways. This currently stands at £32.5 million per annum and is anticipated to continue through to 2012.</p>
<p>2. Secure entitlement for learners to a range of options from the options menu, including from outside of their main learning setting.</p>	<p>No further action would be undertaken to secure this objective. There may be some continuing development as a consequence of the original initiative but this would be likely to dissipate over time.</p>	<p>Learners would not experience wider choice on the scale envisaged.</p> <p>A national learner minimum entitlement would not be set. This would ensure that current inequalities remained unaddressed.</p> <p>There would be no positive impact leading to a reduction the level of those Not in Employment Education and Training (NEET).</p>	<p>There would be reduced administrative costs associated with implementation. These are currently covered from within the £20.6m revenue expenditure contained within the £32.5m</p>

Objective	Comment	Cost	Benefit
		<p>The current level of those NEET aged 16-18 has remained fairly consistent for the last ten years at around 10-12%. It is estimated that the additional resource cost associated with being NEET amounted to £97,000 per person over a lifetime.</p> <p>There would be less ability to meet the needs of a range of learners including the more able and those currently performing at around an average level.</p> <p>In short for a significant number of learners the curriculum available at 14-19 would become less relevant to their needs and an opportunity to make the curriculum more relevant for learners of all abilities would be lost. Along with this would be lost the improvements in participation, achievement and attainment anticipated by the full implementation of the policy.</p> <p>This would reflect adversely upon educational performance and future economic growth.</p>	

Objective	Comment	Cost	Benefit
3. Secure access to a wide range of experiences from the learning core.	No further action would be undertaken to secure this objective through 14-19 Learning Pathways. In practice some elements of the learning core would remain developed but not systematically as a cohesive whole.	Access to the wider experience associated with the learning core would be undeveloped. This would impact negatively upon learner development. It also has potential negative implications for learner motivation and the valuing of non formal learning activities such as community service and good citizenship.	None envisaged.
4. Secure access to support not already covered in previous legislation, principally, learning coach support and personal support.	No further action would be taken to secure this objective through 14-19 Learning Pathways. In practice elements of personal support would continue as at present.	The Learning Coach function as part of a coherent strategy would be lost. The policy is designed to produce significant improvement to the quality of learning support that young people receive. This improvement and the tangible results would be lost.	There would be a saving in costs associated with training and implementation of the learning coach function. This is already included within the £32.5m

Table 8.1.2 Option 2: To continue to evolve and implement 14-19 Learning Pathways Policy without recourse to legislation.

Objective	Comment	Cost	Benefit
<p>1. Promote cooperation and collaboration between providers of education in order to secure an options menu that offers a wide range of choices and opportunities to learners in all parts of Wales.</p>	<p>This could continue to be undertaken. The use of transitional specific funding could be used to provide some incentive to change. Non statutory guidance could assist in encouraging developments in this direction. Ultimately however potential progress will only be fully realised where there is a full and complete commitment to the policy and its implementation. The option to opt out would be a very real one for institutions that wished to do so.</p>	<p>With this option the £32.5m specific grant funding would be required and would be distributed across the achievement of the objectives. This occurs at present.</p> <p>There would be limited development in terms of cooperation and collaboration.</p> <p>A consequence of this would be:</p> <ul style="list-style-type: none"> • limited options menu (local curriculum) development. • Limited removal of duplication. • Sub optimal allocation of resources. <p>These costs would be less than those associated with option 1.</p>	<p>There would be some development in cooperation and collaboration that would facilitate policy implementation and remove some duplication. This would be likely to improve the pattern of resource allocation.</p>
<p>2. Secure entitlement for learners to a range of options from the options menu, including from outside of their main learning setting.</p>	<p>Progress could be made in widening choice. It would be very difficult to establish or guarantee a minimum entitlement across Wales. There would be little incentive to use mainstream funding to widen choice.</p>	<p>Learners would experience wider choice but not on the scale envisaged following full implementation of the policy</p> <p>It would be less likely that a national minimum entitlement would be adhered to. This would mean that current inequalities</p>	<p>Learners would be given a wider choice of options. This could contribute to raising participation and attainment. There would be some moves towards the establishment of an entitlement although this might well vary by area.</p>

Objective	Comment	Cost	Benefit
		<p>would not be fully addressed.</p> <p>There would be a limited positive impact leading to a reduction the level of those NEET's.</p> <p>There would be an advance towards ensuring that the needs of all learners (of whatever ability) could be more effectively met. This effect would however be expected to be less than would be the case if the policy was supported by legislation.</p> <p>For a significant number of learners the curriculum available at 14-19 would remain less relevant to their needs than would be wished. The potential for improvements in participation, achievement and attainment presented by the policy would not be fully realised.</p> <p>This would reflect adversely upon educational performance and future economic growth.</p>	<p>Some positive impact could be expected upon the number of NEETs with the wider choice entitlement interacting with the learning coach function and personal support.</p> <p>There would be an increase in participation, achievement and attainment.</p>

Objective	Comment	Cost	Benefit
3. Secure access to a wide range of experiences from the learning core.	For there to be universal provision for learners in relation to the learning core there would have to be a commitment from all providers to its development.	<p>Access to the wider experience associated with the learning core would be less developed than if supported by legislation. The full potential of the policy would not be realised.</p> <p>The production of guidance. Maintenance of advice and support systems with providers.</p>	Some benefits from the development of the learning core would be evidenced. Non formal learning would be promoted and valued.
4. Secure access to support not already covered in previous legislation, principally, learning coach support and personal support.	The current approach of providing some specific grant funding would help to continue to move this development further.	Learning coach function training and guidance would need to continue. This would be funded from the specific grant for 14-19, from the £20.6m revenue expenditure.	There would be continued development of the learning coach function. This would underpin the wider choice component of the policy. Training and support would continue to be provided.

Table 8.1.3 Option 3: Introduce an Assembly Measure

Objective	Comment	Cost	Benefit
<p>1. Promote cooperation and collaboration between providers of education in order to secure an options menu that offers a wide range of choices and opportunities to learners in all parts of Wales.</p>	<p>That providers are required to fully consider cooperative or collaborative measures represents a significant step forward. This takes place within the context of a specific objective. A clear legal duty is created. Welsh Minister's have the power to direct if necessary.</p>	<p>Implementation of the legislation in relation to the policy will require the allocation of £32.5m annually through until full implementation in 2012. This would need to be allocated across the objectives.</p>	<p>The creation of broadly based, balanced options menus will occur. These will be responsive to local need.</p> <p>Developments will occur on a larger scale and earlier than implied by the other routes considered. There will be a reduction in duplication and a more effective allocation of resources.</p>
<p>2. Secure entitlement for learners to a range of options from the options menu, including from outside of their main learning setting.</p>	<p>The establishment of a clear entitlement within the framework will achieve this.</p>	<p>Support will need to be given to providers to assist them in guaranteeing the minimum entitlement. This will be achieved via the £32.5m allocation.</p>	<p>Learners will be given a minimum entitlement. This will serve to facilitate an equality of opportunity for learners across Wales.</p> <p>Learner's needs and preferred learning styles will be more closely met. There will be a positive impact in terms of participation, achievement and attainment. This will assist in ensuring that national education and training targets are met.</p>
<p>3. Secure access to a wide range of experiences from the learning core.</p>		<p>Production of guidance. Maintenance of advice and support systems with providers.</p>	<p>Access to the wider experience associated with the learning core would be well developed as the</p>

			<p>legislative framework establishes commitment and promotes clarity in terms of the 14-19 learning Pathways.</p> <p>Learning core development supports, and is supported by, the Welsh baccalaureate qualification.</p>
<p>4. Secure access to support not already covered in previous legislation, principally, learning coach support and personal support.</p>		<p>There would be costs associated with development of the learning coach function, training and development. These are currently met from the £20.6m revenue expenditure budget of the specific grant for 14-19 Learning Pathways.</p>	<p>There will be an improvement in participation, achievement and attainment in the 14-19 phase.</p> <p>Existing personal support will be more efficiently targeted within this age group.</p>

Table 8.1.4: Assembly measure – Brief overview of what the measure proposes, rationale, costs and benefits

Proposal	Rationale	Costs	Benefits
<p>1. To place a duty on local education authorities in Wales to form local curricula for learners aged 14-16, and on the Welsh Ministers for learners aged 16-19 that contains specified learning domains.</p>	<p>The formation of a local curriculum is central to ensuring that learners have access to a wide range of options that include vocational provision. A duty to form local curricula must be clearly established and located.</p> <p>Whilst it is entirely appropriate that local education authorities should form local curricula in relation to 14-16 year olds; a different approach is taken in relation to 16 to 18 year olds. This is as a consequence of funding responsibilities. The Welsh Ministers are directly responsible for funding further education in Wales and it is therefore appropriate that they form the local curricula.</p> <p>However, the Welsh Ministers, if they see fit, will be able to make arrangements under section 83 of the Government of Wales Act 2006 for a relevant authority to exercise their functions under this section.</p>	<p>At present option menus (local curriculum) are constructed by Networks via LEAs. Each Network receives £75k to administer the processes associated with 14-19 Learning Pathways including construction of an option menu.</p>	<p>A coherent set of options will be created from which young people are able to choose. This will facilitate wider choice and assist in motivating learners. It will provide a basis upon which improvements in participation, achievement and attainment can be secured.</p> <p>It is estimated that the additional resource cost associated with being NEET amounted to £97,000 per person over a lifetime. Hence this is the potential financial saving from every single reduction in the number of those classified as NEET.</p> <p>In addition wider choice will provide a more challenging experience for those learners who need to be academically stretched.</p>

Proposal	Rationale	Costs	Benefits
<p>2. To enable 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.</p>	<p>Provision of an options menu will not of itself ensure that learners have an entitlement to study an appropriate range of options. A degree of specificity is required to ensure that the concept of a learner's entitlement to choice is realised. There is a need to ensure that a learner can access study to the appropriate depth but can also achieve a breadth of study that ensures a well rounded education. In addition it is important that young people should have access to the option of studying vocational subjects within their overall programme of study. The degree of specificity does, however, have to be such that local areas have the flexibility to respond to local skills need and learner demand.</p>	<p>Many of these courses are funded through mainstream funding methodologies. Transitional specific grant funding has been, and is, made available to facilitate developments in this area. Where specific grant funding is used for the provision of new courses Networks are encouraged to transfer courses to mainstream funding after a maximum of two years. For 2008 approximately £10.5 million has been allocated to widening choice and associated activities.</p>	<p>Young people will have access to a wider choice from which a broad balanced and innovative learning pathway can be constructed.</p> <p>It will again provide a basis upon which improvements in participation, achievement and attainment can be secured.</p>
<p>3. To 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.</p>	<p>It would probably be impossible to establish a system under which all pupils' elections to follow courses of study were converted into entitlements. For example, if only a handful of pupils in a local education authority area chose to follow a particular course it may</p>	<p>There are no direct costs. Head teachers and principals in practice already undertake to make similar decisions.</p> <p>There is however a cost to individual learners who are not able to study their first choice</p>	<p>This process facilitates the achievement of an efficient and effective allocation of resources.</p>

Proposal	Rationale	Costs	Benefits
	not be an efficient use of resources to deliver that course.	course.	
4. To specify the grounds by which a Head Teacher/Principal may decide that a pupil is not entitled to follow a course they had elected.	Sometimes, it will be necessary to remove a pupil's entitlement to follow a course of study. It may be for example that she or he is a danger to themselves or others within a particular environment. In such a situation it would be necessary to remove entitlement.	There are no direct costs. Again, head teachers and principals already take such decisions.	Safeguarding the welfare of learners.
5. To place a duty on governing bodies and head teachers of maintained schools and governing bodies of the further education sector to assist a local education authority or Welsh Ministers in planning local area curricula, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers.	Cooperation requires that organisations plan and work together. For 14-16 year olds the LEA has responsibility for forming local curricula and for post 16 Welsh Ministers have responsibility for ensuring its formation. The effective operation of the policy requires that schools and FEIs assist either LEA and/or Welsh Ministers in their function. In a similar manner it would also be necessary for Welsh Ministers to issue guidance and directions.	In practice FEIs and schools, in many cases, work closely with the LEA and indirectly with the Welsh Ministers through the 14-19 Learning Networks. This has been the case since 2004. It follows therefore that such costs are currently met through the annual network development planning process and associated funding.	This ensures more effective planning and coordination between providers. It helps to ensure that existing best practice is developed across Wales, increasing choice for learners.
6. To maximise cooperation between governing bodies of maintained schools and further education	In order to maximise the availability of courses of study included in local curricula and secure a wide range of choice,	No direct costs. As previously, Networks currently receive funding for administrative purposes relating to 14-19.	Greater cooperation resulting in wider choice for learners.

Proposal	Rationale	Costs	Benefits
<p>institutions, and local education authorities to deliver a wide range of options of study in their local area curricula.</p>	<p>learning settings will need to work together.</p> <p>LEAs and the governing bodies of both maintained schools and FEIs will be under an ongoing duty to consider whether entering into co-operation arrangements will further the objective of maximising the availability of courses. Should they conclude that cooperation would further this objective, then they must seek to do so.</p>		
<p>7. To enable Welsh Ministers to issue guidance and directions in relation to joint working, cooperation and collaboration.</p>	<p>To ensure the successful implementation of joint working Welsh Minister may need to issue supportive guidance and directions.</p>	<p>Production of guidance. There may be costs related to directions, but these will depend upon the nature of the specific directions given in the future. It is not anticipated that any directions would lead to expenditure exceeding the current level associated with 14-19.</p>	<p>More effective delivery of the policy via successful joint working.</p>
<p>8. To give Welsh Ministers the power to amend learning domains.</p>	<p>It may be necessary to make amendments to the learning domains, for example to allow new learning domains to be created.</p>	<p>No direct costs. Any amendment to domains could be accommodated within the annual process of producing option menus, it is not anticipated that such a change would</p>	<p>Flexibility to amend the current construction of learning domains to accommodate and best reflect provision within those domains.</p>

Proposal	Rationale	Costs	Benefits
		increase the cost of the producing option menus.	

9 Competition Assessment

9.1 The competition filter test has been undertaken in respect of the proposed measure. The filter tests have shown a low risk of detrimental effect on competition and no anticipated significant benefits from competition.

10. Post Implementation Review

10.1 As a consequence of the Measure, the 14-19 Learning Pathways policy will move to systematic national implementation. It will become a key component of mainstream educational activity within in Wales. It will therefore become part of review and evaluation processes applied to the education sector as a whole. This embedding of the policy within existing review and evaluation systems will be integral to its success.

Annex 1

Explanatory Notes

Explanatory Notes for Learning and Skills (Wales) Measure 2008

These Explanatory Notes relate to the Learning and Skills (Wales) Measure 2008. They have been prepared by the Welsh Assembly Government's Department for Children, Education, Lifelong Learning and Skills to assist understanding of the Measure. They do not form part of the Measure and have not been endorsed by the National Assembly for Wales.

The Notes need to be read in conjunction with the Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

PART 1 LOCAL CURRICULUM FOR PUPILS IN KEY STAGE 4

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

Sections 1-3 amend the Education Act 2002

Section 1 Interpretation

This section provides additional definitions to those already set out in section 97 EA 2002, and which apply generally for the purposes of that Part. The additional definitions provide the meaning of some of the most important terms used in the provisions inserted by this Measure concerning the local curriculum, namely:

- “course of study”, which is defined by reference to courses approved under section 99 of the Learning and Skills Act 2000. The effect is that, in order for a course of study to be included in any local curriculum formed by a LEA, it must lead to an external qualification approved by the Welsh Ministers under the 2000 Act;
- “local curriculum” and “local curricula” which are to be construed in accordance with section 116A. When the term “local curriculum” is used in relation to a pupil's school, it means the local curriculum which applies in relation to that school. This caters for the possibility that under section 116A a LEA may form more than one local curriculum, e.g. have different local curricula for schools in different parts of its area;
- “maintained secondary school”, which is defined as a maintained school which is a secondary school but is not a community or foundation special school;

- “regulations” which are defined as regulations made by the Welsh Ministers;
- “school”. The definition provides that “school” means, in relation to a pupil, the maintained secondary school at which he or she is a registered pupil.

Section 2 Duty to implement general requirements

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

Section 3 Basic Curriculum for every maintained school in Wales

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

Sections 4-17 insert new provisions into the Education Act 2002

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

This section provides for the formation in each local education authority area of one or more local curricula for 14-16 year olds (pupils in Key Stage 4).

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

Subsection (2) states that a local curriculum must consist of suitable courses of study falling within the learning domains set out in subsection (3), and selected by the local authority. Under subsection (6), the Welsh Ministers decide by direction which courses of study are suitable for inclusion in local curricula. The local authority will then choose from that list of suitable courses.

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

Subsection (4) provides discretion for local authorities to form a local curriculum to meet local needs, subject to regulations which may be made under subsection (5).

Subsection (5) makes provision for regulations to be made by the Welsh

Ministers as to the formation of a local curriculum, for example to set out the minimum number of courses which must be included in a local curriculum or the minimum proportion of vocational courses of study to be included within a local curriculum.

Subsection (6) provides Welsh Ministers with the power to designate a course of study as vocational in nature or “suitable” for the purposes of this section and to specify the particular learning domain into which a course of study falls.

Subsection (7) – This allows regulations to provide for different requirements for local curricula in different areas. For example, in some areas there may be a higher minimum number of courses that must be included in local curricula than others.

Section 5 Authorities with more than one local curriculum (section 116B of the Education Act 2002)

This section applies where a local authority forms more than one local curriculum under section 116A.

Subsection (2) requires local education authorities to designate the maintained secondary schools to which each local curriculum applies. Under the provisions described below, the registered pupils of a maintained secondary school have the right to elect to follow courses of study included within the local curriculum for their school.

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

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

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

Subsection (2) enables regulations to be made which could, for example, specify the maximum number of courses the pupil may choose from the whole local curriculum, identifying the number of ‘points’ that attach to particular courses and setting the maximum aggregate ‘points’ of the courses that may be chosen and the period during which those choices should be made. It may be necessary to restrict the period during which choices may be made in order that, subsequently, the agencies involved have sufficient time to make the necessary preparations for delivering the chosen courses of study (which may be delivered by a school or institution other than the one attended when choices are made).

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

This section provides that a choice made by a pupil under section 5 is an 'in principle' entitlement to follow the chosen course of study. It will become an actual entitlement unless an event provided for under this section occurs.

Subsections (1) and (2) specify that a pupil's entitlement ceases if he or she ceases to be a registered pupil of the school, for example if he or she leaves the local education authority area and becomes registered at a school in a different area of Wales or if, before the beginning of the fourth key stage, the head teacher of a pupil's school has decided under section 116E of the EA 2002 that the pupil is not entitled to follow a chosen course of study.

Subsection (3) specifies that, where an entitlement to follow a course of study arises, it is for the head teacher to decide when the course of study is to begin.

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

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

Subsection (2) sets out the grounds on which a head teacher may decide that a pupil is not entitled to follow a course of study.

Subsection (3) enables the Welsh Ministers, in regulations, to make further provision about the making of decisions under this section. For example, they may provide that decisions must be taken by a particular date in order that pupils know in good time which courses of study they shall be following during Key Stage 4.

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

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

Section 9 Delivery of local curriculum entitlements (section 116F of the Education Act 2002)

This section spells out the nature of an entitlement to follow a course of study. The course of study must be made available to a pupil by, or on behalf of the governing body of his or her school. This means courses of study in the local curriculum may be offered at a different learning setting to the one at which the pupil is registered.

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

Sometimes, it will be necessary to remove a pupil's entitlement to follow a course of study, for health and safety reasons, for example. The grounds on which a head teacher may decide that a pupil will no longer be entitled to follow a course of study are set out in subsection (2).

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

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

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

A local authority's decision as to which courses of study to include within its local curricula under section 116A will be heavily dependent upon local educational capacity. There will be little point in including courses that local schools and Further Education Institutions are not geared up to deliver. Accordingly, this section requires those responsible for delivering 14 to 16 education within a local education authority's area to assist the authority in planning its local curricula.

Subsection (1) specifies that the following people must assist the local authority in this regard:

- (a) the governing body of any maintained secondary school in the authority's area;
- (b) the head teacher of any such school;
- (c) the governing body of an institution within the further education sector situated in the authority's area; and
- (d) the principal of any such further education institution.

Subsection (2) defines "planning the local curriculum or curricula" as the process by which a local education authority decides which courses of study to include in a local curriculum or curricula. Subsection (3) provides for the Welsh Ministers to issue guidance and give directions as to the exercise of a person's functions under this section and requires those persons to have regard to the guidance and comply with directions.

This section does not prevent plans being made for cross-authority co-operation in the delivery of local curriculum courses, for example the delivery of a course of study by a Further Education Institution on behalf of schools from a different local education authority area to that in which the Institution is situated. But any such arrangement will be voluntary and not subject to the duty and central (Welsh Minister) controls provided for in this section.

Section 12 Delivery of local curriculum entitlements: joint working (section 116I of the Education Act 2002)

As stated in subsection (1), the objective of this section is to maximise the

availability of courses of study included in a local curriculum. In order to secure a wide range of choice, learning settings may need to work together.

Under subsection (2), the governing body of a maintained school is under an ongoing duty to consider whether the objective of this section (maximising the availability of courses of study) would be furthered by entering into a co-operation arrangement. If the governing body concludes that that objective would be furthered by the entering into of a co-operation arrangement, it must seek to do so. "Co-operation arrangement" is defined by subsection (5) to mean an arrangement whereby some body, such as a governing body of a maintained school, provides a course of study on behalf of a governing body of another other maintained school, or arrangements made under regulations under sections 26 of the Education Act 2002 and 166 of the Education and Inspections Act 2006, which are more formal collaboration arrangements that could include, for example, the establishment of a joint committee.

Subsection (3) concerns the role of a local education authority in maximising the availability of local curriculum courses. The authority is under an ongoing duty to consider whether it would further the objective of this section to enter into an arrangement whereby it arranges for someone else to provide local curriculum courses of study on behalf of governing bodies of maintained schools. If the authority concludes that to enter into such an arrangement would further that objective, it must seek to do so. Subsection (3) might, for example, encompass an arrangement made by an LEA with a private training organisation for it to provide a course of study for pupils from a number of maintained secondary schools within the authority's area.

Where a school governing body (under subsection (2)) or a LEA (under subsection (3)) makes a proposal to a Further Education Institution, subsection (4) requires the governing body of the institution to consider the proposal.

Subsection (6) defines "relevant local curriculum" for the purposes of this section.

Section 13 Joint working: guidance and directions (section 116J of the Education Act 2002)

This section relates to the joint-working obligations imposed by section 116I. A local education authority, a governing body of a maintained secondary school and the governing body of a further education institution are required to have regard to guidance or comply with directions issued by Welsh Ministers as regards their functions under section 116I.

Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 116I. In the case of a direction to enter cooperative arrangements with a party other than a Local Education Authority, school governing body or Further Education Institution governing body, such a direction must not be given without the consent of that party. This will include other organisations

providing courses of study which are included in the local curriculum, for example, private training providers or voluntary sector organisations.

Section 14 Power to amend learning domains (section 116K of the Education Act 2002)

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

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

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

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

This Part of the Measure does not apply in relation to special schools. However, subsection (1) allows for regulations to be made to apply the local curriculum provisions in respect of registered pupils of special schools.

Subsection (2) allows for the regulations made under subsection (1) to apply the local curriculum with modifications which may be needed, for example, to take into account the circumstances in which special schools operate.

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

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

Sections 18 and 19 amend the Education Act 2002

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

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

Section 19 Regulations and orders: Procedure

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

PART 2 LOCAL CURRICULUM FOR STUDENTS AGED 16 TO 18

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

Sections 20 – 36 amend the Learning and Skills Act 2000

Section 20 Education and training for persons aged 16 to 18

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

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

This section provides for at least one local curriculum for students aged 16 to 18 be formed for the area of each LEA in Wales.

Subsection (1) provides that it is the Welsh Minister's duty to form local curricula under this section. Accordingly, a different approach is taken in relation to 16 to 18 year olds than is taken under Part 1 of the Measure in relation to 14 to 16 year olds. This is as a consequence of funding responsibilities. The Welsh Ministers are directly responsible for funding further education in Wales and it is therefore appropriate that they form the local curricula. The contents of local curricula will have to be constrained by available resources and it is therefore necessary that the body that controls resources also controls the contents of local curricula.

Subsection (2) states that the local curriculum must consist of courses of study falling within the learning domains described in subsection (3) and selected by the Welsh Ministers. The Welsh Ministers, if they see fit, will be able to make arrangements under section 83 of the Government of Wales Act 2006 for a relevant authority to exercise their functions under this section. For example, the Welsh Ministers could make arrangements with a local education authority so that it selected on behalf of the Welsh Ministers the courses of study to be included in the local curriculum for the authority's area.

Subsection (3) defines the learning domains which constitute the categories of

the local curriculum. These are the same as those for pupils aged 14 to 16 at Key Stage 4 to provide the opportunity for continuity and progression throughout the 14-18 phase of education.

Subsection (4) provides that a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides.

Section 22 Areas with more than one local curriculum (section 33B of the Learning and Skills Act 2000)

This section applies where the Welsh Ministers form more than one local curriculum under section 33A.

Subsection (2) requires the Welsh Ministers to designate the maintained schools or institutions to which each local curriculum applies.

Section 23 Determination of a pupil's "relevant school or institution" (section 33C of the Learning and Skills Act 2000)

The 16 to 18 local curriculum provisions operate by reference to the concept of a pupil's "relevant school or institution". The decision as to "relevant school or institution" (the identification of the school or institution from whose local curriculum a pupil is to be entitled to elect to follow courses) is the first stage in the decision-making process that eventually leads to an entitlement to follow a course of study.

It is for the head teacher of the school attended by a pupil during Key Stage 4 to decide which is a pupil's relevant school or institution. It may be the school attended during Key Stage 4 (where it has a sixth form) or it may be a different institution for example a Further Education Institution. The identification of the relevant school or institution will depend on which school or institution the head teacher thinks the pupil is likely to attend once s/he ceases to be of compulsory school age. Before arriving at a conclusion, the head teacher will need to consult with the pupil in question as well as any school or institution which the pupil would like to attend. Once a determination has been made as to a pupil's relevant school or institution, that school or institution subsequently becomes responsible, in accordance with the following provisions of this Measure, for delivering 16 to 18 local curriculum entitlements enjoyed by that pupil.

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

Subsection (2) defines a pupil's relevant school or institution as one which in the opinion of the head teacher is likely to be responsible for the provision of the majority of the pupil's education once the pupil is over compulsory school age.

Subsection (3) enables the Welsh Minister, in regulations, to may make provision as to the making of requests and determinations under this section.

For example, provision as to the date or time by which a request or determination is to be made.

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

This section will operate in relation to children in Key Stage 4. It is during that stage that they will need to make choices about the courses they wish to follow when they cease to be of compulsory school age at the end of Key Stage 4.

Subsection (1) sets out the rights of pupils to elect to follow a course or courses from the relevant local curriculum for that pupil. These rights may, however, be limited by regulations made by the Welsh Ministers under subsection (3).

Subsection (2) sets out the period of time during which any student's entitlement exists. Any entitlement ceases once a person attains the age of nineteen. This does not mean that such a person must cease following a course of study upon attaining nineteen, merely that s/he no longer has an enforceable entitlement to continue to follow the course.

Subsection (3) enables regulations to be made by the Welsh Ministers which may, for example, specify the maximum number of courses the pupil may choose from the whole local curriculum, the maximum aggregate points of the courses that may be chosen and the period during which those choices should be made. It may be necessary to restrict the period during which choices may be made in order that, subsequently, the agencies involved have sufficient time to make the necessary preparations for delivering the chosen courses of study (which may be delivered by a school or institution other than the one attended when choices are made).

Subsection (4) defines the "relevant local curriculum" for a pupil. It is the local curriculum designated in respect of the pupil's relevant school or institution under section 33B of the Learning and Skills Act 2000.

Section 25 Students' local curriculum entitlements (section 33E of the Learning and Skills Act 2000)

This section provides that a choice made by a student under section 33D is an 'in principle' entitlement to follow the chosen course of study at or under arrangements made by the student's relevant school or institution. It will become an actual entitlement unless an event provided for under this section occurs.

Subsection (1) specifies that a student's entitlement ceases if the student's relevant school or institution ceases to be responsible for the majority of his or her education, for example if the student ceases to be a registered pupil of a school before entering its sixth form, or if the head teacher or principal of a student's relevant school or institution decided (before the beginning of the

entitlement period) that the student is not entitled to follow a chosen course of study.

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

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

It would probably be impossible to establish a system under which all elections to follow courses of study were converted into entitlements. For example, if only a handful of students in a local education authority area chose to follow a particular course it may not be an efficient use of resources to deliver that course. This is why this section permits head teachers or principals to decide that a student is not entitled to follow a particular course or courses of study.

Subsection (2) sets out the grounds on which a head teacher or principal may decide that a pupil is not entitled to follow a course of study.

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

The Welsh Ministers have the power to issue guidance to head teachers and principals about the exercise of their functions under this section. This could deal with matters such as liaison with other heads or principals (with a view to offering courses of study to students from each other's schools or institutions) before making a decision as to entitlement.

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

Section 27 Delivery of local curriculum entitlements (section 33G of the Learning and Skills Act 2002)

This section spells out the nature of an entitlement to follow a course of study. The course of study must be made available to a student by, or on behalf of the governing body of his or her relevant school or institution. This means courses of study in a local curriculum may be offered at a different learning setting to a pupil's relevant school or institution, for example a student who attends a school with a sixth form may follow certain courses of study provided at a local Further Education Institution.

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

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

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

Subsection (2) specifies the grounds on which a head teacher or principal of a student's relevant school or institution may decide to remove a student's entitlement. Those grounds are health and safety and disproportionate expenditure..

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

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

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

Section 29 Planning the local curriculum (section 33I of the Learning and Skills Act 2000)

The Welsh Ministers' decision as to which courses of study to include within a local curriculum under section 33A will be heavily dependent upon local educational capacity. There will be little point in including courses that local schools and further education institutions are not geared up to deliver. Accordingly, this section requires those responsible for delivering 16 to 18 education to assist the Welsh Ministers in planning the local curriculum or curricula for a particular local education authority area.

Subsection (1) specifies that the following people must assist the Welsh Ministers in this regard:

- (a) the local education authority for whose area the particular local curriculum or curricula is to be formed;
- (b) the governing body and head teacher of any secondary school maintained by that authority;
- (c) the governing body and principal of an institution within the further education sector situated in that authority's area.

Subsection (2) defines "planning the local curriculum or curricula" as the process by which the Welsh Ministers decide which courses of study to include in a local curriculum. Subsection (3) provides for the Welsh Ministers to issue guidance and directions to the bodies specified in subsection (1) in connection with their duty to assist the Welsh Ministers under this section.

Section 30 Delivery of local curriculum entitlements: joint-working (section 33J of the Learning and Skills Act 2000)

As stated in subsection (1), the objective of this section is to maximise the availability of courses of study included in local curricula. In order to secure a wide range of choice, learning settings may need to work together.

Under subsection (2), the governing body of a maintained secondary school is under an ongoing duty to consider whether the objective of this section (maximising the availability of courses of study) would be furthered by entering into a co-operation arrangement. If the governing body concludes that that objective would be furthered by the entering into of a co-operation arrangement, it must seek to do so. A similar obligation is imposed upon Further Education Institution governing bodies by subsection (3). “Co-operation arrangement” is defined by subsection (5) to mean an arrangement whereby some body provides a course of study on behalf of a maintained school or Further Education Institution, or arrangements made under section 26 of the Education Act 2002 and section 166 of the Education and Inspections Act 2006, that is more formal collaboration arrangements that could include the establishment of a joint committee.

Subsection (4) concerns the role of a local education authority in maximising the availability of local curricula courses. The authority is under an ongoing duty to consider whether it would further the objective of this section to enter into an arrangement whereby it arranges for someone else to provide local curricula courses of study on behalf of maintained schools or Further Education Institutions. If the authority concludes that that objective would be furthered by the entering into of such an arrangement, it must seek to do so. Subsection (4) might, for example, encompass an arrangement made by a local education authority with a private training organisation for it to provide a course of study for pupils from a number of maintained secondary schools within the authority's area.

Subsection (6) defines “relevant local curriculum” for the purposes of this section.

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

This section relates to the joint-working obligations imposed by section 33J. A local education authority, a governing body of a maintained secondary school and the governing body of a further education institution are required to have regard to guidance or comply with directions issued by Welsh Ministers as regards their functions under section 33J.

Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 33J. In the case of a direction to enter co-operation arrangements with a party other than a Local Education Authority, School governing body or Further Education Institution governing body, such a direction must not be given without the consent of that party. This will include other organisations providing courses of study which are included in local curricula, for example, private training providers or voluntary sector organisations.

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

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

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

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

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

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

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

This Part of the Measure does not apply to special schools or further education institutions which wholly or mainly provide education for persons with a learning difficulty. Provision is however made in this section for regulations to be made applying the local curriculum provisions to above compulsory school age registered pupils of special schools or students of institutions which provide education wholly or mainly for persons with a learning difficulty.

Subsection (1) enables the making of regulations to apply the local curriculum provisions to the persons who are above compulsory school age and are registered at a maintained special school or who receive the majority of their education at an institution that provides education wholly or mainly for persons with a learning difficulty.

Subsection (2) enable regulations made under subsection (1) to apply the local curriculum provisions with any modifications needed to take into account, for example, the circumstances in which these institutions operate.

Section 36 Regulation and orders: procedures

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

PART 3 – SERVICES RELATED TO EDUCATION TRAINING AND SKILLS

Section 37 Provision of services by maintained schools and further education institutions

Subsection (1) permits the Welsh Ministers to direct the governing bodies of maintained schools and Further Education Institutions to provide or secure “learner support services”. They may also be directed to participate where learner support services are provided by someone else.

Subsection (3) gives a broad meaning to the term “learner support services”. Accordingly, a potentially wide range of services may be required to be provided under this section.

Subsection (4) sets out ancillary matters that may be included in a learner support services direction under subsection (1). For example, the directed body may be required to have regard to guidance given by the Welsh Ministers as to the provision of a particular learning support service.

Section 38 Duties of governing bodies

Governing bodies of maintained schools and further education institutions are required to comply with a direction given under section 37.

Section 39 Amendments to the Learning and Skills Act 2000

This section amends the Learning and Skills Act 2000.

The amendments made by this section to section 126 of that Act ensure that the requirements as to the transfer of information, and related matters, imposed upon educational institutions by that section in relation to youth support services also apply in the case of learner support services. For example, if a further education institution were providing learner support services to a registered pupil, the pupil’s school could be required to provide (with parental consent) relevant information about the pupil, such as his educational history.

The amendments made to section 127 of the Learning and Skills Act 2000 ensure that Her Majesty’s Chief Inspector of Education and Training in Wales (Estyn) has the power to arrange for inspections of the provision of learner support services.

Section 40 The learning pathway document

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

Section 41 Learning pathways: interpretation

This section defines terms used in section 38.

Section 42 Provision of curriculum information

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

PART 4 – MISCELLANEOUS AND SUPPLEMENTAL

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

Currently, education legislation tends to be drafted on the assumption that a child will receive the majority of his or her education at a single site. Under the local curricula formed under Parts 1 and 2 of this Measure, this will often not be the case. For example, a child could receive a significant amount of his or her education at a school other than that at which he or she is registered.

The purpose of this section is to allow regulations to be made so that the existing body of education legislation will apply in an appropriate fashion in respect of children who receive education at more than one educational institution. For example, regulations under this section could specify that, for the purposes of legislation governing meetings with a child's parents, the child is to be treated as a registered pupil at more than one school in order that the parents have the right to meet with those responsible for the child's education at both schools.

Section 44 and Schedule Minor and consequential amendments

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

Section 45 Orders and regulations

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

Section 46 Commencement

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

Section 47 Short title

This confers the title of the Measure – the Learning and Skills (Wales) Measure 2008.