

Explanatory Memorandum to The Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by Department of Children Education Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009, and I am satisfied that the benefits outweigh any costs.

John Griffiths AM

Deputy Minister for Skills

9 December 2009

(i) **Description** – The Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009 are made under section 116A(5), 116D(2), 116F(3), 116H(3) and 210 of the Education Act 2002, as amended by the Learning and Skills (Wales) Measure 2009 (“the Measure”). These sections of the Measure enable regulations to be made regarding the formation of the local curriculum (section 116A), pupils’ choices of local curriculum courses (section 116D), the head teacher’s decision as to entitlement (116F) and the head teacher’s decision to remove entitlement (116H). These regulations set out the relevant detail in each respective case and the procedures to be followed regarding the head teacher’s decisions as to entitlement and removal of entitlement.

(ii) **Matters of special interest to the Subordinate Legislation Committee** –

None

(iii) **Legislative Background** – The regulations are made under sections 116A, 116D, 116F and 116H of the Education Act 2002 as amended by sections 4, 7, 9 and 11 of the Measure respectively and in accordance with section 210(6A) of the Education Act 2002 as amended by section 20 of the Measure will be subject to the negative resolution procedure.

(iv) **Purpose and intended effect of the legislation**

The Measure makes 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. 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.

The key purpose of the 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. The local area curriculum will contain a wide range of options of study.

In terms of the availability of choice of courses of study to the pupil, the formation of the local curriculum is crucial.

Section 116A of the Education Act 2002 as inserted by the Measure provides for the formation in each local education authority area of one or more local curricula for pupils aged 14 – 16 years. The section places a duty on LEAs to form at least

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

one local curriculum for their area. It requires that such a local curriculum must consist of suitable courses of study falling within a number of learning domains and enables flexibility of provision to take account of local needs. It provides for regulations to be made by Welsh Ministers as to the formation of the local curriculum, which includes prescribing the minimum number of courses of study which must be included in a local curriculum. The purpose of this legislation is to ensure the widest possible choice of courses of study to the pupil and the introduction by 2012 of a minimum choice for every student of 30 courses of study at Key Stage 4.

Regulation 3 requires a local authority to form one or more local curricula in compliance with section 116A of the Education 2002 and the current regulations. This must take place in sufficient time prior to the start of the school year to allow pupils to exercise their election to follow a course of study under regulation 8 (in the spring term).

Regulation 4 sets out the minimum number of courses of study of local curricula and groups local authorities into 3 bands to take account of their ability to progress towards the target of 30 courses at NQF level 2. It permits a local authority to include a course of study at NQF level 1 in a maintained school within its area provided that the same course is not available at NQF level 2 for pupils at the fourth key stage. It further requires a minimum number of vocational studies to be studied across the three learning domains.

Regulation 5 provides for a minimum number of points of courses of study of local curricula and sets out transitional provisions for interim minimum points requirements in accordance with the banding process.

Regulation 6 sets out the minimum number of points of vocational courses for local curricula, also taking into account transitional banding arrangements.

Regulation 7 stipulates that in the third key stage a pupil will be subject to a maximum points entitlement of 180 points (this excluding key skills qualifications).

Regulation 8 provides that a pupil in key stage 3 must make his/her election regarding choice(s) of course during the spring term.

Regulation 9 concerns the head teacher's making of the decision as to entitlement, and time limits, and procedures to

be followed in each case and for subsequent review of this decision by the head teacher if a pupil requests this.

Regulation 10 concerns the head teacher's decision to remove entitlement, and time limits and procedures to be followed in each case and for subsequent review of this decision by the head teacher if a pupil requests this.

Regulation 11 is a technical regulation setting out requirements for service of notices and calculating time periods in respect of the time limits and procedures set out in regulations 9 - 10, referred to above.

(v) **Implementation**

If the Regulations were annulled it would have the following consequences:

- i. There would be no requirement upon a local authority to form local curricula in sufficient time for pupils to exercise their election to follow a course or courses of study and no required date for this to occur.
- ii. It would not be possible to implement the points-based system which is essential to ensure the maximisation of choices for pupils of courses of study, in terms of the formation of local curricula under the Measure.
- iii. There would be no maximum entitlement which could result in disproportionate resources being allocated to a minority of pupils.
- iv. There would be no minimum requirement for the number of vocational courses under local curricula.
- v. There would be no time limit for the making of the pupil's election as to courses of study.
- vi. There would be no procedure or time limits for the making of the decision as to entitlement by the head teacher.
- vii. There would be no review procedure.
- viii. There would be no procedure or time limits for the making of the decision as to entitlement by the head teacher.
- ix. There would be no review procedure.

(vi) **Consultation**

Consultation has taken place upon the policy informing the regulations, as detailed in the RIA below.

(VII) **Regulatory Impact Assessment**

a) **Options**

The key purpose of the 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.

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.

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

The proposed regulations relevant to this specify the minimum number of courses of study to be selected for inclusion within the local curriculum as a whole, the minimum number or volume of vocational courses of study to be included in a local curriculum, and the maximum number of courses of study a pupil has the right to elect to follow.

The Measure specifies the grounds upon 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 proposed regulations cover the making of these decisions, including reviews, time limits and procedures.

Option 1 – Do Nothing

The implications of doing nothing are that the main policy objectives of the Measure including the right for learners aged 14 – 19 in Wales, to elect to follow a course of study from a local area curriculum will not be implemented effectively and on schedule, as the points requirements

and provisions regarding the making of elections by pupils and for the making by the Head teacher of the decision as to entitlement and removal thereof would not be introduced.

Option 2 – Provide Guidance

The Welsh Assembly Government is not empowered under the Measure to issue statutory guidance based upon the points system set out above with regard to the minimum numbers of choices of courses of study available to students, under local curricula, the maximum number of courses of study and points, and stipulations as to the numbers of vocational courses available. This option is therefore not available. The Welsh Assembly Government is also not empowered to issue statutory guidance regarding the head teacher's decision as to entitlement nor in relation to its removal. Therefore no such option is available in this regard either. In any event the making of both the decision as to entitlement and the removal of entitlement, (including the review process) require a procedural structure and fairness consistent with legal principles, which would be extremely difficult upon the basis of statutory guidance alone.

Option 3 – Introduce Regulations

This is by far the most effective option and fully addresses the policy objectives above. They provide an appropriate and consistent statutory framework for implementation across Wales. They provide for:

- A requirement upon a local authority to form local curricula in sufficient time for pupils to exercise their election to follow a course or courses of study and a stipulation as to when this is to occur.
- The introduction of a clear and uniform points-based system which is essential to ensure the maximisation of choices for pupils of courses of study, in terms of the formation of local curricula under the Measure.
- A maximum entitlement for each pupil to ensure a fair allocation of resources to all pupils.
- A definitive minimum requirement for the number of vocational courses under local curricula.
- A clear limit for the making of the pupil's election as to courses of study.
- Clear processes, procedures and time limits for the making of the decision as to a pupil's entitlement by the head teacher and similarly for reviews.
- Clear processes, procedures and time limits for the making of the decision regarding the removal of a pupil's entitlement by the head teacher and similarly for reviews.

In turn this would:

- Secure access to wider curriculum choice for 14-19 year old learners across Wales including a learning core.
- Support the Welsh legislative framework under the Measure 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*

b) **Costs and Benefits**

Option 1 – Do Nothing

If the regulations were not made there would be no further costs incurred for the Welsh Assembly Government. However there would be:

- No clear points-based mechanism to ensure the maximisation of pupils' choices in terms of local curricula.
 - No maximum entitlement for pupils, which could have costs implications in terms of possible unfair allocation of resources to individual students and inefficient use of 14 -19 funding in terms of failure to achieve key policy outcomes.
 - There could also be potential costs implications and the risks of incurring legal costs in terms of the failure to regulate clearly in respect of the Head teacher's decision as to entitlement or removal thereof in the absence of appropriate regulations.
- The potential for improvements in participation, achievement and attainment would also be less likely to be realised.

In short, key aspects of the Learning and Skills (Wales) Measure 2009 would not be properly or effectively implemented calling into question whether the aim 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 achievable.

Option 2 – Provide Guidance

Issuing guidance could partially address the objectives that have been outlined. However, it is not possible to issue such

guidance in respect of the formation of local curricula pupils' choices of elections and the decision and removal of entitlement by the Head teacher, for the reasons indicated above. The net effect would therefore be likely to be little better than Option 1.

Option 3 – Introduce Regulations

This is the most effective option which fully addresses the policy objectives set out in option 3 above. The costs associated with the Measure and Regulations can be met from within the £32.5 million allocated for implementation of the 14-19 Learning Pathways agenda.

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 addition there has been specific grant funding for the Welsh Baccalaureate a development closely associated with the 14-19 phase.

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.

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 2012¹

c) Competition Assessment

The regulations will have no effect on competition.

d) Consultation

Consultation has taken place on the policy to inform the Regulations. Consultation regarding the policy basis for regulations under section 4 of the Measure (Section 116A of the Education Act 2002 as inserted by the Measure, on 'Formation of local curricula for pupils in key stage 4') took place from July to December 2008. This consisted of the Welsh Assembly Government leading discussions with the Network Executive, Extended Network Advisory Group and key stakeholders in individual local authority areas. A further similar consultation on

¹ Source 2006 based population projections for Wales, Government Actuary's Department (GAD)

the policy informing the Regulations under sections 7 (section 116D, Education Act 2002), 9 (section 116F, Education Act 2002) and 11 (section 116H, Education Act 2002) of the Measure, which form the pretext of the current draft Regulations, took place between 20th May and 14th July 2009. The consultation was supported by 26 consultation events primarily based upon the 14-19 Networks. These broadly coincide with local authority areas. In all, 35 responses were received, including sixteen written responses from networks and seven from trade unions. Other respondents included fforwm, the National Union of Students and Governors Wales. Additional individual responses were received from Estyn, Awarding bodies and individual learning providers. The consultation document was available on the Welsh assembly Government's website at:

e) Post implementation review

The effect of the regulations will be monitored annually via the submission of Annual Network Development Plans and associated documentation. Annual Network Development plans are constructed on a local authority area basis and seek to engage all members of the 14-19 Network within an area. Annual Network Development Plans draw directly upon developments within education in Wales and will therefore provide a sound basis for the review of the regulations over time.

We shall review these Regulations through meetings with the Area Networks.

f) Summary

The Regulations are required in order to implement provisions made in the Learning and Skills (Wales) Measure 2009 regarding the formation of local curricula, pupils' choices of local curriculum courses, the head teacher's decision as to entitlement and the Head teacher's decision to remove entitlement in order to 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 in accordance with the policy. It aims to create a right for learners aged 14-19 in Wales to elect to follow a course of study from a local area curriculum which will contain a wide range of options of study. Costs on the Welsh Assembly Government will be met from the Learning Pathways agenda as previously indicated as well as general educational expenditure. There are clear and significant potential benefits of the Regulations, in terms of the full and effective implementation of the Measure.