



# Learning and Skills (Wales) Measure 2009

## 2009 nawm 1

A Measure of the National Assembly for Wales to make provision about the entitlement to education of children in the last two years of compulsory schooling and young persons who have not attained the age of nineteen; to make provision as regards the provision by maintained schools and institutions within the further education sector of services related to education; to make provision for the disclosure of curriculum information; and for connected purposes.

**This Measure, passed by the National Assembly for Wales on 17 March 2009 and approved by Her Majesty in Council on 13 May 2009, enacts the following provisions:—**

### PART 1

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

##### *General*

#### **1 Interpretation**

- (1) Section 97 of the Education Act 2002 (c. 32) (interpretation of Part 7) is amended in accordance with this section.
- (2) After the definition of “attainment targets”, insert—

““course of study” means a course of education or training which leads to a qualification or set of qualifications approved under section 99 of the Learning and Skills Act 2000 for the purposes of section 96 of that Act;”.
- (3) After the definition of “key stage”, insert—

““local curriculum” and “local curricula” are to be construed in accordance with section 116A and, in relation to a pupil’s school, “local curriculum” means—

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- (a) where the local education authority by which the school is maintained has formed a single local curriculum under section 116A, that local curriculum; or
- (b) where the local education authority by which the school is maintained has formed more than one local curriculum under section 116A, the local curriculum in respect of which the school is designated under section 116C(2);”.

(4) After the definition of “maintained nursery school”, insert—

““maintained secondary school”, in sections 116A to 116K, means a maintained school which is a secondary school unless it is a community or foundation special school which is maintained by a local education authority in Wales;”.

(5) After the definition of “pupil”, insert—

““regulations” means regulations made by the Welsh Ministers;

“school”, in sections 116E to 116H, in relation to a pupil, means the maintained secondary school of which he or she was a registered pupil when he or she made an election under section 116D(1);”.

## **2 Duty to implement general requirements**

- (1) Section 100 of the Education Act 2002 (c. 32) (duty to implement general requirements) is amended in accordance with this section.
- (2) Omit “and” at the end of subsection (4)(a) and insert “, and” at the end of subsection (4)(b).
- (3) After subsection (4)(b), insert—
  - “(c) functions conferred by this Part in relation to the local curriculum or curricula for a local education authority’s area.”

## **3 Basic curriculum for every maintained school in Wales**

- (1) Section 101 of the Education Act 2002 (c. 32) (basic curriculum for every maintained school in Wales) is amended in accordance with this section.
- (2) Omit “and” at the end of subsection (1)(c).
- (3) After subsection (1)(c), insert—
  - “(ca) in the case of a secondary school, provision for education which satisfies the entitlements of registered pupils at the school under section 116E, and”.

### *Formation of local curricula*

## **4 Formation of local curricula for pupils in Key Stage 4**

After section 116 of the Education Act 2002 (c. 32) insert—

*“The local curricula*

**116A Formation of local curricula for pupils in Key Stage 4**

- (1) Each local education authority in Wales must form for its area one or more local curricula for pupils in the fourth key stage.
- (2) A local curriculum must consist of suitable courses of study each of which—
  - (a) falls within a category in subsection (3) (the “learning domains”); and
  - (b) is from time to time selected by a local education authority to form part of that local curriculum.
- (3) The learning domains are—
  - (a) mathematics, science and technology;
  - (b) business, administration and law;
  - (c) services for people;
  - (d) arts, media, culture and languages;
  - (e) humanities, social sciences and preparation for life and work.
- (4) Subject to any regulations made under subsection (5), a local education authority may form a local curriculum as it sees fit.
- (5) Regulations may make provision as to the formation of a local curriculum, including in particular provision—
  - (a) requiring a minimum number of courses of study to be included within—
    - (i) a local curriculum; or
    - (ii) a particular learning domain of a local curriculum;
  - (b) specifying—
    - (i) a minimum proportion of vocational courses of study (as compared with other courses of study) that must be included within a local curriculum; or
    - (ii) a minimum number of vocational courses of study that must be included within a local curriculum;
  - (c) preventing during a specified period any alteration to the contents of a local curriculum.
- (6) For the purposes of this section—
  - (a) a course of study is suitable if it is designated as suitable for inclusion in local curricula by direction given by the Welsh Ministers;
  - (b) a vocational course of study is a course of study designated as such by direction given by the Welsh Ministers;
  - (c) a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides.
- (7) Regulations under subsection (5) may make different provision in relation to local curricula formed by different local education authorities.”

## 5 Local curricula: Welsh language

After section 116A of the Education Act 2002 (c. 32) insert—

### “116B Local curricula: Welsh language

- (1) Each local education authority must exercise their functions in relation to local curricula so as to promote access to and availability of courses of study which are taught through the medium of the Welsh language.
- (2) In the discharge of its duty under subsection (1), a local education authority must have regard to any guidance given by the Welsh Ministers.
- (3) Guidance under subsection (2) may be given to a particular authority, or to authorities of a particular class or to authorities generally.
- (4) Within two months of the end of each academic year, a local education authority must, in accordance with any instructions given by the Welsh Ministers, provide the Welsh Ministers with a report which—
  - (a) describes the courses of study included within local curricula established by the authority for that academic year which were to be taught through the medium of Welsh;
  - (b) describes how many pupils elected to follow such courses under section 116D and how many pupils were entitled to follow such courses under section 116E;
  - (c) explains what the authority plans to do in academic years following that to which the report relates so that registered pupils of schools maintained by the authority are given the opportunity to follow local curricula courses of study which are taught through the medium of Welsh.
- (5) For the purposes of subsection (4), “academic year” means the period of 12 months beginning on 1 September.”

## 6 Authorities with more than one local curriculum

After section 116B of the Education Act 2002 (c. 32) insert—

### “116C Authorities with more than one local curriculum

- (1) This section applies where a local education authority forms more than one local curriculum under section 116A.
- (2) In relation to each local curriculum, the local education authority must designate the maintained secondary schools whose registered pupils are to be entitled to elect under section 116D to follow courses of study included within the curriculum.”

### *Entitlements*

## 7 Pupils' choices of local curriculum courses

After section 116C of the Education Act 2002 (c. 32) insert—

### **“116D Pupils' choices of local curriculum courses**

- (1) A registered pupil of a maintained secondary school has the right to elect to follow, during the fourth key stage, a course or courses of study included within the local curriculum for the pupil's school. But this is subject to regulations made under subsection (2).
- (2) Regulations may make provision as to the making of elections under this section, including in particular provision—
  - (a) specifying the maximum number of courses of study of a particular type that a pupil has the right to elect to follow;
  - (b) identifying points to be allotted to courses of study and preventing a pupil from having the right to elect to follow a combination of courses of study if their aggregate points exceed a specified amount;
  - (c) as to the period during which elections are to be made.”

## **8 Pupils' local curriculum entitlements**

After section 116D of the Education Act 2002 (c. 32) insert—

### **“116E Pupils' local curriculum entitlements**

- (1) During the fourth key stage, a pupil who has made an election under section 116D(1) is entitled to follow the elected course of study unless—
  - (a) the pupil ceases to be a registered pupil of the school at which he or she was registered when he or she elected under section 116D(1) to follow the course of study; or
  - (b) before the beginning of the fourth key stage, the head teacher of the pupil's school has decided under section 116F that the pupil is not entitled to follow the course of study.
- (2) Where a pupil is entitled to follow a course of study, it is for the head teacher of the pupil's school to decide upon which date during the fourth key stage the course is to begin.”

## **9 Head teacher's decision as to entitlement**

After section 116E of the Education Act 2002 (c. 32) insert—

### **“116F Head teacher's decision as to entitlement**

- (1) If the head teacher of a pupil's school is satisfied that any of the grounds in subsection (2) apply, the head teacher may decide that the pupil is not entitled to follow a course of study which the pupil has elected to follow under section 116D(1).
- (2) The grounds referred to in subsection (1) are that—
  - (a) as a result of the pupil's level of educational attainment, the course of study is not suitable for him or her;

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- (b) as a result of other elections made by the pupil under section 116D(1), it is not reasonably practicable for him or her to follow the course of study;
  - (c) the amount of time likely to be spent travelling to the place at which the course of study is likely to be delivered would be detrimental to the pupil’s education;
  - (d) disproportionate expenditure would be incurred if the pupil were to follow the course of study;
  - (e) the pupil’s or another person’s health or safety would be placed unacceptably at risk if the pupil were to follow the course of study.
- (3) Regulations may make provision connected with the making of decisions under subsection (1), including in particular provision—
- (a) as to the time or date by which decisions are to be made;
  - (b) as to the procedure to be followed in connection with the making of decisions;
  - (c) for appeals against decisions to be made to the governing body of a pupil’s school or another person specified in the regulations;
  - (d) as to the time or date by which appeals are to be determined;
  - (e) as to the procedure to be followed in connection with the determination of an appeal.
- (4) A head teacher and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.
- (5) The Welsh Ministers may by order—
- (a) amend or omit any paragraph of subsection (2);
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.”

## 10 Delivery of local curriculum entitlements

After section 116F of the Education Act 2002 (c. 32) insert—

### “116G Delivery of local curriculum entitlements

Where a pupil is entitled to follow a course of study under section 116E(1), the governing body of the pupil’s school must ensure that during the fourth key stage the course is made available to the pupil by or on behalf of the governing body.”

## 11 Head teacher’s decision to remove entitlement

After section 116G of the Education Act 2002 (c. 32) insert—

### “116H Head teacher’s decision to remove entitlement

- (1) If the head teacher of a pupil’s school is satisfied that any of the grounds in subsection (2) apply, the head teacher may decide that a pupil is no longer

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entitled to follow a course of study that the pupil was entitled to follow under section 116E.

- (2) The grounds referred to in subsection (1) are that—
  - (a) the pupil’s or another person’s health or safety would be placed unacceptably at risk if the pupil were to continue to follow the course of study;
  - (b) disproportionate expenditure would be incurred if the pupil were to continue to follow the course of study.
- (3) Regulations may make provision connected with the making of decisions under subsection (1) including in particular provision—
  - (a) as to the procedure to be followed in connection with the making of decisions;
  - (b) for appeals against decisions to be made to the governing body of a pupil’s school or another person specified in the regulations;
  - (c) as to the effect of a decision pending determination of an appeal;
  - (d) as to the procedure to be followed in connection with the determination of an appeal.
- (4) A head teacher and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.
- (5) The Welsh Ministers may by order—
  - (a) amend or omit any paragraph of subsection (2);
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.”

*Joint-working*

## 12 Planning the local curriculum

After section 116H of the Education Act 2002 (c. 32) insert—

### “116I Planning the local curriculum

- (1) The following persons must assist a local education authority in planning the local curriculum or curricula for its area—
  - (a) the governing body and head teacher of any maintained secondary school maintained by the authority;
  - (b) the governing body and principal or other head of an institution within the further education sector in the authority’s area.
- (2) In subsection (1), “planning the local curriculum or curricula” means the process by which a local education authority decides under section 116A which courses of study to include in the local curriculum or curricula for its area.
- (3) The persons mentioned in subsection (1) must—
  - (a) have regard to any guidance given from time to time; and
  - (b) comply with any directions given,

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by the Welsh Ministers as to the exercise of their functions under that subsection.”

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

After section 116I of the Education Act 2002 (c. 32) insert—

#### “116J Delivery of local curriculum entitlements: joint-working

- (1) The objective of this section is to maximise the availability of courses of study included in a local curriculum formed under section 116A.
- (2) In relation to the local curriculum or curricula for the area of a local education authority, the persons mentioned in subsection (4) must take all reasonable steps in order to achieve the objective of this section.
- (3) The duty under subsection (2) includes, but is not limited to, a duty to seek to enter into cooperation arrangements where, having considered whether it would further the objective of this section to do so, the persons mentioned in subsection (4) have concluded that entering into such arrangements would further that objective.
- (4) The persons are—
  - (a) the local education authority;
  - (b) the governing body of a secondary school maintained by the authority; and
  - (c) the governing body of an institution within the further education sector which is situated within the area of the authority.
- (5) In this section and section 116K “co-operation arrangements” means—
  - (a) arrangements under which any person provides, on behalf of the governing body of a maintained secondary school, a course of study included within the relevant local curriculum for the school;
  - (b) arrangements made under regulations under section 26 (collaboration between schools); and
  - (c) arrangements made under regulations under section 166 of the Education and Inspections Act 2006 (collaboration arrangements: maintained schools and further education bodies).
- (6) For the purposes of this section, in relation to a maintained secondary school, “relevant local curriculum” means—
  - (a) where the local education authority by which the school is maintained has formed a single local curriculum for its area, that curriculum; or
  - (b) where the local education authority by which the school is maintained has formed more than one local curriculum for its area, the curriculum in respect of which the school is designated under section 116C(2).”

### 14 **Joint-working: guidance and directions**

After section 116J of the Education Act 2002 (c. 32) insert—



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**“116K Joint-working: guidance and directions**

- (1) A local education authority, a governing body of a maintained secondary school and the governing body of an institution within the further education sector in Wales must have regard to any guidance given from time to time by the Welsh Ministers as to the discharge of their duties under section 116J.
- (2) Guidance given under subsection (1) may relate to the content of co-operation arrangements.
- (3) The persons mentioned in subsection (1) must comply with any direction given by the Welsh Ministers as to the entering into of co-operation arrangements.
- (4) A direction under subsection (3)—
  - (a) may require persons to enter into specified arrangements;
  - (b) may specify the terms upon which arrangements are to be entered into (whether generally or in respect of specified arrangements);
  - (c) in the case of a direction to enter into specified arrangements with a person who is not mentioned in subsection (1), must not be given unless that person consents to the direction.”

*Supplemental*

**15 Power to amend learning domains**

After section 116K of the Education Act 2002 (c. 32) insert—

**“116L Power to amend learning domains**

The Welsh Ministers may by order—

- (a) amend or omit any paragraph of subsection (3) of section 116A;
- (b) add additional paragraphs to that subsection;
- (c) amend or omit such additional paragraphs.”

**16 Application of local curriculum provisions to children who are not registered pupils**

After section 116L of the Education Act 2002 (c. 32) insert—

**“116M Application of local curriculum provisions to children who are not registered pupils**

- (1) Regulations may apply the provisions of sections 116A to 116K and the provisions of any regulations made under section 46 of the Learning and Skills (Wales) Measure 2009 in respect of a person falling within subsection (3).
- (2) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient.
- (3) A person falls within this subsection if he or she—
  - (a) is of compulsory school age;

- (b) is not a registered pupil of a maintained school; and
- (c) receives all, or the majority of, his or her education at, or under arrangements made by the governing body of, an institution within the further education sector in Wales.”

**17 Application of local curriculum provisions to children who are registered pupils of special schools**

After section 116M of the Education Act 2002 (c. 32) insert—

**“116N Application of local curriculum provisions to children who are registered pupils of special schools**

- (1) Regulations may apply the provisions of sections 116A to 116K and the provisions of any regulations made under section 46 of the Learning and Skills (Wales) Measure 2009 in respect of a person falling within subsection (3).
- (2) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient.
- (3) A person falls within this subsection if he or she—
  - (a) is of compulsory school age; and
  - (b) is a registered pupil of a community or foundation special school which is maintained by a local education authority in Wales and is not established in a hospital.”

**18 Local curriculum: directions**

After section 116N of the Education Act 2002 (c. 32) insert—

**“116O Local curriculum: directions**

Any direction given by the Welsh Ministers under sections 116A(6), 116I(3) and 116K(3) may be varied or revoked by a further direction.”

**19 Powers to alter or remove requirements for fourth key stage**

- (1) Section 107 of the Education Act 2002 (c. 32) is amended in accordance with this section.
- (2) Insert “(1)” at the beginning of the section and replace “National Assembly for Wales” with “Welsh Ministers”.
- (3) At the end of the section insert—
  - “(2) Such an order may make such amendments of this Act as appear to the Welsh Ministers to be necessary or expedient in connection with the provision made under subsection (1).”

**20 Regulations and orders: procedure**

- (1) The Education Act 2002 (c. 32) is amended in accordance with subsections (2) and (3).

(2) In section 210(6A)—

- (a) after “regulations” insert “or an order”;
- (b) after “section 32(9)” insert “or Part 7”; and
- (c) at the end insert—

“unless the instrument contains an order mentioned in subsection (6AB).”

(3) After section 210(6A) insert—

“(6AB) No order shall be made by the Welsh Ministers under section 101(3), 103(4)(b), 105(6), 107, 116F(5), 116H(5) or 116L unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”

## PART 2

### LOCAL CURRICULUM FOR STUDENTS AGED 16 TO 18

#### *General*

#### **21 Education and training for persons aged 16 to 18**

(1) Section 31 of the Learning and Skills Act 2000 (c. 21) is amended in accordance with subsection (2).

(2) In section 31(2)—

- (a) in paragraph (a) delete “and”;
- (b) at the end of paragraph (b) insert “and”;
- (c) following paragraph (b) insert—

“(c) sufficient to satisfy the entitlements conferred under section 33F”.

#### *Formation of local curricula*

#### **22 Formation of local curricula for students aged 16 to 18**

After section 33 of the Learning and Skills Act 2000 (c. 21) insert—

#### *“The local curricula*

##### **33A Formation of local curricula for students aged 16 to 18**

- (1) The Welsh Ministers must form for the area of each local education authority one or more local curricula for students who are above compulsory school age but have not attained the age of nineteen.
- (2) Each local curriculum must consist of courses of study each of which—
  - (a) falls within a category in subsection (3) (the “learning domains”); and

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(b) is from time to time selected by the Welsh Ministers to form part of that local curriculum.

(3) The learning domains are—

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

(4) For the purposes of this section, a course of study falls within a particular learning domain if a direction of the Welsh Ministers so provides.”

### 23 **Local curricula: Welsh language**

After section 33A of the [Learning and Skills Act 2000 \(c. 21\)](#) insert—

#### **“33B Local curricula: Welsh language**

The Welsh Ministers must exercise their functions in relation to local curricula so as to promote access to and availability of courses of study which are taught through the medium of the Welsh language.”

### 24 **Areas with more than one local curriculum**

After section 33B of the [Learning and Skills Act 2000 \(c. 21\)](#) insert—

#### **“33C Areas with more than one local curriculum**

- (1) This section applies where the Welsh Ministers form more than one local curriculum for the area of a local education authority under section 33A.
- (2) In relation to each local curriculum, the Welsh Ministers must designate the maintained schools or institutions whose relevant students are to be entitled to elect under section 33E to follow courses of study included within the curriculum.”

#### *Entitlements*

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

After section 33C of the [Learning and Skills Act 2000 \(c. 21\)](#) insert—

#### **“33D Determination of a pupil’s “relevant school or institution”**

- (1) Where, during the fourth key stage, a registered pupil of a maintained school requests that the school’s head teacher determines the pupil’s relevant school or institution, the head teacher must comply with that request. But this is subject to regulations made under subsection (3).
- (2) A pupil’s relevant school or institution is the maintained school or institution whose governing body is, in the opinion of the head teacher, likely to be

responsible for providing (or making arrangements for the provision of) the majority of the pupil's education once he or she has ceased to be of compulsory school age.

- (3) Regulations may make provision as to the making of requests and determinations under this section, including in particular provision as to the date or time by which a request or determination is to be made.
- (4) This section does not require any person to admit a pupil to a particular school or institution.”

## 26 Pupils' choices of local curriculum courses

After section 33D of the Learning and Skills Act 2000 (c. 21) insert—

### “33E Pupils' choices of local curriculum courses

- (1) A registered pupil of a maintained school has the right to elect to follow, during the period described in subsection (2) (“the entitlement period”), a course or courses of study included within the relevant local curriculum for that pupil. But this is subject to regulations made under subsection (3).
- (2) The entitlement period—
  - (a) begins on the first day of the academic year subsequent to the pupil having ceased to be of compulsory school age; and
  - (b) ends on the day on which he or she attains the age of nineteen.
- (3) Regulations may make provision as to the making of elections under this section, including in particular provision—
  - (a) specifying the maximum number of courses of study of a particular type that a pupil has the right to elect to follow;
  - (b) identifying points to be allotted to courses of study and preventing a pupil from having the right to elect to follow a combination of courses of study if their aggregate points exceed a specified amount;
  - (c) as to the period during which elections are to be made.
- (4) For the purposes of this section the “relevant local curriculum”, in relation to a pupil, means—
  - (a) where it has been determined under section 33D that a pupil's “relevant school or institution” is a school—
    - (i) where the Welsh Ministers have formed under section 33A a single local curriculum for the area of the local education authority by which the school is maintained, that local curriculum; or
    - (ii) where the Welsh Ministers have formed under section 33A more than one local curriculum for the area of the local education authority by which the school is maintained, the local curriculum in respect of which the school is designated under section 33C(2);
  - (b) where it has been determined under section 33D that a pupil's “relevant school or institution” is an institution—

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- (i) where the Welsh Ministers have formed under section 33A a single local curriculum for the local education authority area in which the institution is situated, that local curriculum; or
- (ii) where the Welsh Ministers have formed under section 33A more than one local curriculum for the local education authority area in which the institution is situated, the local curriculum in respect of which the institution is designated under section 33C(2).”

## 27 **Students' local curriculum entitlements**

After section 33E of the Learning and Skills Act 2000 (c. 21) insert—

### “33F Students' local curriculum entitlements

- (1) During the entitlement period, a student who has made an election under section 33E(1) is entitled to follow the elected course of study unless—
  - (a) the governing body of the student’s relevant school or institution ceases to be responsible for providing (or making arrangements for the provision of) the majority of the student’s education; or
  - (b) before the beginning of the entitlement period, the head teacher or principal of the student’s relevant school or institution has decided under section 33G that the student is not entitled to follow the course of study.
- (2) Where a person is entitled to follow a course of study, it is for the head teacher or principal of the relevant school or institution to decide upon which date during the entitlement period the course is to begin.”

## 28 **Head teacher’s or principal’s decision as to entitlement**

After section 33F of the Learning and Skills Act 2000 (c. 21) insert—

### “33G Head teacher’s or principal’s decision as to entitlement

- (1) If the head teacher or principal of a student’s relevant school or institution is satisfied that any of the grounds in subsection (2) apply, the head teacher or principal may decide that the student is not entitled to follow a course of study which the student has elected to follow under section 33E.
- (2) The grounds referred to in subsection (1) are that—
  - (a) as a result of the student’s level of educational attainment, the course of study is not suitable for him or her;
  - (b) as a result of other elections made by the student under section 33E(1), it is not reasonably practicable for him or her to follow the course of study;
  - (c) the amount of time likely to be spent travelling to the place at which the course is likely to be delivered would be detrimental to the student’s education;
  - (d) disproportionate expenditure would be incurred if the student were to follow the course of study;

- (e) the student’s or another person’s health or safety would be placed unacceptably at risk if the student were to follow the course of study.
- (3) Regulations may make provision connected with the making of decisions under subsection (1), including in particular provision—
  - (a) as to the time or date by which decisions are to be made;
  - (b) as to the procedure to be followed in connection with the making of decisions;
  - (c) for appeals against decisions to be made to the school or institution’s governing body or another person specified in the regulations;
  - (d) as to the time or date by which appeals are to be determined;
  - (e) as to the procedure to be followed in connection with the determination of an appeal.
- (4) A head teacher or principal and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.
- (5) The Welsh Ministers may by order—
  - (a) amend or omit any paragraph of subsection (2);
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.”

## 29 Delivery of local curriculum entitlements

After section 33G of the Learning and Skills Act 2000 (c. 21) insert—

### “33H Delivery of local curriculum entitlements

Where a student is entitled to follow a course of study under section 33F(1), the governing body of the student’s relevant school or institution must ensure that during the entitlement period the course is made available to the student by or on behalf of the governing body.”

## 30 Head teacher’s or principal’s decision to remove entitlement

After section 33H of the Learning and Skills Act 2000 (c. 21) insert—

### “33I Head teacher’s or principal’s decision to remove entitlement

- (1) If the head teacher or principal of a student’s relevant school or institution is satisfied that any of the grounds in subsection (2) apply, the head teacher or principal may decide that a student is no longer entitled to follow a course of study that the student was entitled to follow under section 33F.
- (2) The grounds referred to in subsection (1) are that—
  - (a) the student’s or another person’s health or safety would be placed unacceptably at risk if the pupil were to continue to follow the course of study;
  - (b) disproportionate expenditure would be incurred if the pupil were to continue to follow the course of study.

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- (3) Regulations may make provision connected with the making of decisions under subsection (1) including in particular provision—
- (a) as to the procedure to be followed in connection with the making of decisions;
  - (b) for appeals against decisions to be made to the school or institution’s governing body or another person specified in the regulations;
  - (c) as to the effect of a decision pending determination of an appeal;
  - (d) as to the procedure to be followed in connection with the determination of an appeal.
- (4) A head teacher or principal and governing body or other person charged with determining appeals under regulations made under subsection (3) must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.
- (5) The Welsh Ministers may by order—
- (a) amend or omit any paragraph of subsection (2);
  - (b) add additional paragraphs to that subsection;
  - (c) amend or omit such additional paragraphs.”

*Joint-working*

### 31 Planning the local curriculum

After section 33I of the Learning and Skills Act 2000 (c. 21) insert—

**“33J Planning the local curriculum**

- (1) The following persons must assist the Welsh Ministers in planning the local curriculum or curricula for a local education authority’s area—
- (a) the local education authority;
  - (b) the governing body and head teacher of any maintained school maintained by the authority;
  - (c) the governing body and principal of an institution in the authority’s area.
- (2) In subsection (1), “planning the local curriculum or curricula” means the process by which the Welsh Ministers decide under section 33A which courses of study to include in the local curriculum or curricula.
- (3) The persons mentioned in subsection (1) (a) to (c) must—
- (a) have regard to any guidance given from time to time; and
  - (b) comply with any directions given,
- by the Welsh Ministers as to the exercise of their functions under that subsection.”

### 32 Delivery of local curriculum entitlements: joint-working

After section 33J of the Learning and Skills Act 2000 (c. 21) insert—



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*Status: This is the original version (as it was originally enacted).*

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### **“33K Delivery of local curriculum entitlements: joint-working**

- (1) The objective of this section is to maximise the availability of courses of study included in a local curriculum formed under section 33A.
- (2) In relation to the local curriculum or curricula for a local education authority, the persons mentioned in subsection (4) must take all reasonable steps in order to achieve the objective of this section.
- (3) The duty under subsection (2) includes, but is not limited to, a duty to seek to enter into cooperation arrangements where, having considered whether it would further the objective of this section to do so, the persons mentioned in subsection (4) have concluded that entering into such arrangements would further that objective.
- (4) The persons are—
  - (a) the local education authority;
  - (b) the governing body of a secondary school maintained by the authority; and
  - (c) the governing body of an institution within the further education sector which is situated within the area of the authority.
- (5) In this section and section 33L “co-operation arrangements” means—
  - (a) arrangements under which any person provides, on behalf of the governing body of a maintained school, a course of study included within the relevant local curriculum for the school;
  - (b) arrangements under which any person provides, on behalf of the governing body of an institution, a course of study included within the relevant local curriculum for the institution;
  - (c) arrangements made under regulations under section 26 of the Education Act 2002 (collaboration between schools); and
  - (d) arrangements made under regulations under section 166 of the Education and Inspections Act 2006 (collaboration arrangements: maintained schools and further education bodies).
- (6) For the purposes of this section, “relevant local curriculum” means—
  - (a) in relation to a maintained school—
    - (i) where the Welsh Ministers have formed a single local curriculum for the area of the local education authority by which the school is maintained, that local curriculum; or
    - (ii) where the Welsh Ministers have formed more than one local curriculum for the area of the local education authority by which the school is maintained, the local curriculum in respect of which the school is designated under section 33C(2);
  - (b) in relation to an institution—
    - (i) where the Welsh Ministers have formed a single local curriculum for the local education authority area in which the institution is situated, that curriculum; or
    - (ii) where the Welsh Ministers have formed more than one local curriculum for the local education authority area in which the

institution is situated, the local curriculum in respect of which the institution is designated under section 33C(2).”

### **33 Joint-working: guidance and directions**

After section 33K of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33L Joint-working: guidance and directions**

- (1) A local education authority, a governing body of a maintained school and the governing body of an institution must have regard to any guidance given from time to time by the Welsh Ministers as to the discharge of their duties under section 33K.
- (2) Guidance given under subsection (1) may relate to the contents of co-operation arrangements.
- (3) The persons mentioned in subsection (1) must comply with any direction given by the Welsh Ministers as to the entering into of co-operation arrangements.
- (4) A direction under subsection (3)—
  - (a) may require persons to enter into specified arrangements;
  - (b) may specify the terms upon which arrangements are to be entered into (whether generally or in respect of specified arrangements);
  - (c) in the case of a direction to enter into specified arrangements with a person who is not mentioned in subsection (1), must not be given unless that person consents to the direction.”

#### *Supplemental*

### **34 Power to amend learning domains**

After section 33L of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33M Power to amend learning domains**

The Welsh Ministers may by order—

- (a) amend or omit any paragraph of subsection (3) of section 33A;
- (b) add additional paragraphs to that subsection;
- (c) amend or omit such additional paragraphs.”

### **35 The local curriculum: interpretation**

After section 33M of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33N The local curriculum: interpretation**

- (1) In sections 33A to 33L—
 

“academic year” means the period of 12 months beginning on 1 September;

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*Status: This is the original version (as it was originally enacted).*

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“course of study” means a course of education and training which leads to a qualification or set of qualifications approved under section 99 for the purposes of section 96;

“entitlement period” means the period described in section 33E(2);

“fourth key stage” is to be construed in accordance with section 103 of the Education Act 2002;

“institution” means an institution within the further education sector in Wales unless the institution provides education wholly or mainly for persons with a learning difficulty (within the meaning of section 41);

“local curriculum” and “local curricula” are to be construed in accordance with section 33A;

“local education authority” means a local education authority in Wales;

“maintained school” means a community, foundation or voluntary school maintained by a local education authority in Wales provided that it is also a secondary school;

“principal”, in relation to an institution, means the principal or other head of the institution;

“regulations” means regulations made by the Welsh Ministers;

“relevant school or institution”, in relation to a person, is to be construed in accordance with section 33D;

“relevant student”, in relation to a maintained school or institution, means a student for whom the school or institution is his or her relevant school or institution;

“student” means a person who has made an election under section 33E.

- (2) Unless the context otherwise requires, an expression used in sections 33A to 33N, 33P and 33Q and also the Education Act 1996 is to bear for the purposes of those sections the meaning given to it for the purposes of that Act.”

### **36 Local curriculum: directions**

After section 33N of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33O Local curriculum: directions**

Any direction given by the Welsh Ministers under sections 33A(4), 33J(3) and 33L(3) may be varied or revoked by a further direction.”

### **37 Application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties**

After section 33O of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33P Application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties**

- (1) Regulations may apply the provisions of sections 33A to 33L, 33N and 33O and the provisions of any regulations made under section 46 of the Learning

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*Status: This is the original version (as it was originally enacted).*

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and Skills (Wales) Measure 2009 in respect of a person who falls, or is likely to fall, within subsection (3).

- (2) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient.
- (3) A person falls within this subsection if he or she—
  - (a) is above compulsory school age; and
  - (b) either—
    - (i) a registered pupil of a community or foundation special school which is maintained by a local education authority in Wales and is not established in a hospital; or
    - (ii) receiving the majority of his or her education at an institution which provides education wholly or mainly for persons with a learning difficulty (within the meaning of section 41).”

### **38 Application of local curriculum provisions to institutions within the higher education sector**

After section 33P of the Learning and Skills Act 2000 (c. 21) insert—

#### **“33Q Application of local curriculum provisions to institutions within the higher education sector**

- (1) Regulations may apply the provisions of sections 33A to 33L, 33N and 33O and the provisions of regulations made under section 46 of the Learning and Skills (Wales) Measure 2009 in relation to an institution, or institutions, within the higher education sector in Wales as those provisions apply in relation to an institution within the further education sector in Wales.
- (2) The regulations may also apply those provisions in relation to the principal or governing body of an institution within the higher education sector in Wales (or to persons with functions that are similar to those of a principal or governing body) as they apply in relation to the principal or governing body of an institution within the further education sector in Wales.
- (3) The regulations may apply those provisions with such modifications as appear to the Welsh Ministers to be necessary or expedient.”

### **39 Regulations and orders: procedure**

After section 152(4) of the Learning and Skills Act 2000 (c. 21) insert—

- “(4A) Any statutory instrument containing regulations made by the Welsh Ministers under section 33D(3), 33E(3), 33G(3), 33I(3), 33P or 33Q is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4B) No order shall be made by the Welsh Ministers under section 33G(5), 33I(5) or 33M unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”

### PART 3

#### SERVICES RELATED TO EDUCATION, TRAINING AND SKILLS

##### *Learner support services*

#### **40 Provision of services by maintained schools and further education institutions**

- (1) The Welsh Ministers may direct a person mentioned in subsection (2)—
  - (a) to provide learner support services;
  - (b) to secure the provision of learner support services;
  - (c) to participate in the provision of learner support services.
- (2) The persons are—
  - (a) the governing body of a maintained school in Wales;
  - (b) the governing body of an institution within the further education sector in Wales.
- (3) In this section “learner support services” means services which in the opinion of the Welsh Ministers will encourage, enable or assist young persons (directly or indirectly) —
  - (a) to participate effectively in education or training;
  - (b) to take advantage of opportunities for employment; or
  - (c) to participate effectively and responsibly in the life of their communities.
- (4) A direction under subsection (1)—
  - (a) may include provision for grants, loans and other kinds of financial assistance to be provided by the Welsh Ministers (whether or not on conditions);
  - (b) may require a governing body to have regard to guidance given by the Welsh Ministers;
  - (c) may require a governing body when making arrangements with other persons to require those persons to have regard to guidance given by the Welsh Ministers.
- (5) A direction under subsection (1)—
  - (a) may relate to a particular class of young person;
  - (b) may make different provision for different classes of young person;
  - (c) may be revoked or varied by a later direction.
- (6) Where a direction under subsection (1) relates to the provision of a service in the form of advice or information, it must be framed so that—
  - (a) it relates only to information which is presented in an impartial manner; and
  - (b) it relates only to advice which—
    - (i) is given by a person who considers that it will promote the best interests of the young person concerned; and
    - (ii) does not seek to promote, contrary to the young person’s best interests, the interests or aspirations of any school, institution or other person.
- (7) In this section—

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*Status: This is the original version (as it was originally enacted).*

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- (a) “young persons” means persons who have attained the age of eleven but not the age of twenty six;
- (b) “institution within the further education sector” has the same meaning as in the Education Act 1996 (c. 56);
- (c) “maintained school” has the same meaning as in the School Standards and Framework Act 1998 (c. 31).

#### **41 Duties of governing bodies**

- (1) A governing body of a maintained school or institution within the further education sector must comply with a direction given to it under section 40(1).
- (2) Action which a governing body takes in pursuance of subsection (1) may relate to a particular class of young person.

#### **42 Amendments to the Learning and Skills Act 2000**

- (1) The Learning and Skills Act 2000 (c. 21) is amended in accordance with this section.
- (2) In subsection (1) of section 126 of that Act, after “section 123(1)(a) or (b)” insert “or section 40(1)(a) or (b) of the Learning and Skills (Wales) Measure 2009”.
- (3) In subsection (1)(a) of section 127 of that Act, after “section 123(1)” insert “or section 40(1) of the Learning and Skills (Wales) Measure 2009”.

### *Learning Pathways*

#### **43 The learning pathway document**

- (1) This section makes provision for a relevant pupil and a relevant student to be provided with a document which records his or her learning pathway (a “learning pathway document”).
- (2) In subsection (1), a pupil’s or student’s “learning pathway” means—
  - (a) the courses of study (if any) that the pupil or student is entitled to follow under section 116E(1) of the Education Act 2002 or section 33F(1) of the Learning and Skills Act 2000; and
  - (b) the learner support services (if any) to be provided to a pupil or student by virtue of section 40 of this Measure.
- (3) The learning pathway document—
  - (a) must be provided within a reasonable period of time following an entitlement arising as described in subsection (2)(a) or a decision being taken to provide services as described in subsection (2)(b); and
  - (b) must subsequently be amended or re-issued within a reasonable period of time following—
    - (i) a variation in such an entitlement or decision; or
    - (ii) such an entitlement arising or such a decision being taken.
- (4) The duty to provide a learning pathway document under subsection (3)(a) is a duty of—

- (a) in the case of a relevant pupil, the head teacher of the pupil’s maintained school when an event described in subsection (3)(a) occurs; and
  - (b) in the case of a relevant student, the principal of the student’s institution when an event described in subsection (3)(a) occurs.
- (5) The duty to amend or re-issue a learning pathway document under subsection (3)(b) is a duty of—
- (a) in the case of a relevant pupil, the head teacher of the pupil’s maintained school when an event described in subsection (3)(b) occurs; and
  - (b) in the case of a relevant student, the principal of the pupil’s institution when an event described in subsection (3)(b) occurs.
- (6) A head teacher of a maintained school and principal of an institution must have regard to any guidance given from time to time by the Welsh Ministers as to the exercise of their functions under this section.

#### **44 Learning pathways: interpretation**

In this section and section 43—

“institution” (*“sefydliad”*) means an institution within the further education sector in Wales, and, in relation to a relevant student, means the institution whose governing body is responsible for providing, or arranging for the provision of, all or the majority of his or her education;

“institution within the further education sector” (*“sefydliad yn y sector addysg bellach”*) has the same meaning as in the Education Act 1996 (c. 56);

“maintained school” (*“ysgol a gynhelir”*) means—

- (a) any community, foundation or voluntary school maintained by a local education authority in Wales, or
- (b) any community or foundation special school which is maintained by a local education authority in Wales and is not established in a hospital,

and, in relation to a relevant pupil, means the maintained school of which he or she is a registered pupil;

“principal” (*“pennaeth sefydliad”*) means the principal or other head of an institution;

“registered pupil” (*“disgybl cofrestredig”*) has the same meaning as in section 434 of the Education Act 1996;

“relevant pupil” (*“disgybl perthnasol”*) means a registered pupil of a maintained school; and

“relevant student” (*“myfyriwr perthnasol”*) means a person who—

- (a) receives the majority of his or her education at, or under arrangements made by the governing body of, an institution; and
- (b) has not attained the age of nineteen or such later age as may be prescribed in regulations made by the Welsh Ministers.

#### *Provision of curriculum information*

#### **45 Provision of curriculum information**

- (1) The Education Act 1997 (c. 44) is amended in accordance with this section.

(2) After section 45A insert—

**“45B Provision of curriculum information**

- (1) Subject to subsections (2) and (3), a service provider may demand from a person mentioned in subsection (6) such curriculum information as is specified in the demand.
- (2) A service provider must not demand any curriculum information unless the provider reasonably considers that the information would assist it in providing its services.
- (3) A service provider must not demand any curriculum information which identifies, or allows to be identified, any pupil or student.
- (4) A person mentioned in subsection (6) must comply with a demand made under subsection (1) by providing the service provider with the information demanded.
- (5) A service provider may publish in whatever form it sees fit any curriculum information provided under subsection (4).
- (6) The persons referred to in subsection (1) are—
  - (a) the governing body and head teacher of a school in Wales falling within section 43(2)(a); and
  - (b) the governing body and principal of an institution within the further education sector in Wales.
- (7) In this section—

“curriculum information” means—

  - (a) in relation to a school mentioned in subsection (6)(a), information about the curriculum for registered pupils at the school during the relevant phase of their education; and
  - (b) in relation to an institution within the further education sector, information about the courses of study and other education and training available at the institution;

“pupil” means, in relation to a school mentioned in subsection (6)(a), a person receiving education at the school;

“relevant phase” has the same meaning as in section 43(5);

“service provider” means a person providing services in pursuance of arrangements made with, or directions given by, the Welsh Ministers under section 10 of the Employment and Training Act 1973, and “services” shall be construed accordingly; and

“student” means, in relation to an institution within the further education sector, a person receiving education at the institution.”



## PART 4

### MISCELLANEOUS AND SUPPLEMENTAL

#### 46 Regulations in connection with the operation of the local curriculum

- (1) If the Welsh Ministers are of the opinion mentioned in subsection (2), they may by regulations make provision, for the specified purposes of an enactment, as to the circumstances in which—
- (a) a person is, or is not, to be taken to be—
    - (i) a person for whom education is being provided at a school;
    - (ii) a pupil or registered pupil of a school or a registered parent of a registered pupil;
    - (iii) at a school;
    - (iv) attending, attending at or in attendance at a school;
    - (v) receiving education at a school;
    - (vi) studying, or intending to study at, a school;
    - (vii) a person who is admitted to or has been refused admission to a school;
    - (viii) applying for admission to a school, offering to admit a person to a school, accepting or refusing to accept an application for admission to a school or determining admissions to a school;
    - (ix) a person who has made a decision as to the school at which education is to be provided for a child;
    - (x) a person in respect of whom charges may be made in respect of admission to a maintained school.
  - (b) arrangements for the provision of education on behalf of a school are, or are not, to be taken to be admission arrangements;
  - (c) arrangements for enabling preferences to be expressed as to the school at which the person expressing the preference wishes education to be provided for himself or herself or another person do, or do not, apply;
  - (d) a person is, or is not, to be taken to be—
    - (i) receiving education or training at an institution within the further education sector;
    - (ii) attending, or in attendance at, such an institution;
    - (iii) a student of, or at, such an institution;
    - (iv) studying, or intending to study, at such an institution;
    - (v) applying for admission to such an institution, offering to admit a person to such an institution, accepting or refusing to accept an application for admission to such an institution, selecting a person for admission to such an institution or determining admissions to such an institution;
    - (vi) in relation to such an institution, a disabled person.
- (2) The opinion is that the provision is necessary, desirable or expedient in connection with the operation of the amendments made to the Education Act 2002 (c. 32) and the Learning and Skills Act 2000 (c. 21) by Parts 1 and 2 of this Measure.
- (3) The purposes that may be specified under subsection (1) include those of making regulations or an order under an enactment.

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*Status: This is the original version (as it was originally enacted).*

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- (4) In this section “enactment” includes an enactment—
- (a) contained in this Measure; or
  - (b) contained in an Act of Parliament or Measure of the National Assembly for Wales passed after the passing of this Measure.

**47 Minor and consequential amendments**

The Schedule contains minor and consequential amendments.

**48 Orders and regulations**

- (1) Any power of the Welsh Ministers to make regulations or an order under this Measure is exercisable by statutory instrument.
- (2) Any such power includes power to—
  - (a) make different provision for different cases;
  - (b) make provision generally or in relation to specific cases;
  - (c) make such incidental, supplementary, transitional or saving provision as the Welsh Ministers think fit.
- (3) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

**49 Commencement**

- (1) Sections 46, 48, 50 and this section come into force at the end of a period of two months beginning with the day on which this Measure is approved by Her Majesty in Council.
- (2) The remaining provisions of this Measure are to come into force on such day as the Welsh Ministers may by order appoint. Different days may be appointed for different purposes.

**50 Short title**

This Measure may be cited as the Learning and Skills (Wales) Measure 2009.

SCHEDULE

(introduced by section 47)

MINOR AND CONSEQUENTIAL AMENDMENTS

*Learning and Skills Act 2000 (c. 21)*

- 1 Amend the Learning and Skills Act 2000 as follows.
- 2 In the sections mentioned in paragraph 3 replace each reference to “National Assembly” with “Welsh Ministers”.
- 3 The sections are 32(1), 33, 34, 35(2) and (5), 36(1), 37, 38(1), 39(1), 40 and 41(1).
- 4 In section 31—
  - (a) in subsection (1) replace “National Assembly for Wales (the National Assembly)” with “Welsh Ministers”;
  - (b) in subsection (3) replace “on it” with “on them”;
  - (c) in subsection (3) replace the first reference to “National Assembly” with “Welsh Ministers”; and
  - (d) in subsection (3)(d) replace “National Assembly thinks” with “Welsh Ministers think”.
- 5 In section 32(3) replace—
  - (a) “on it” with “on them”;
  - (b) the first reference to “National Assembly” with “Welsh Ministers”; and
  - (c) “National Assembly thinks” with “Welsh Ministers think”.
- 6 In section 34—
  - (a) in subsection (2)(a) replace “itself” with “themselves”; and
  - (b) in subsection (3) replace “its power” with “their power”.
- 7 In section 35—
  - (a) in subsection (1) replace—
    - (i) “National Assembly itself provides” with “Welsh Ministers themselves provide”; and
    - (ii) “it may impose” with “they may impose”;
  - (b) in subsection (2) replace—
    - (i) “by it” with “by them”;
    - (ii) “it requests” with “they request”; and
    - (iii) “its functions” with “their functions”.
- 8 In section 37—
  - (a) in subsection (2) replace “its powers” with “their powers”; and
  - (b) in subsection (4) replace “its power” with “their power”.
- 9 In section 40(5) replace “its decisions” with “their decisions”.
- 10 In section 41—
  - (a) in subsections (2) to (4) replace—
    - (i) each reference to “National Assembly is” with “Welsh Ministers are”;
    - (ii) each reference to “it cannot” with “they cannot”; and
    - (iii) each reference to “it also secures” with “they also secure”;

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- (b) in subsections (2) and (3) replace each reference to “National Assembly must” with “Welsh Ministers must”; and
- (c) in subsection (4) replace “National Assembly may” with “Welsh Ministers may”.

*Education Act 2002 (c. 32)*

- 11 Amend the Education Act 2002 as follows.
- 12 In the sections mentioned in paragraph 13 replace each reference to “National Assembly for Wales” with “Welsh Ministers”.
- 13 The sections are 100(6) and (8), 101(3), 102, 103(4), 105(4) and (6), 108(1) to (3), (6), (7) and (11), 111(1), (3), (5) and (6), 114(6) and 118.
- 14 In section 100(1) replace “The National Assembly for Wales shall exercise its functions” with “The Welsh Ministers shall exercise their functions”.
- 15 In sections 108(1) and (3) replace each reference to “the Assembly considers” with “the Welsh Ministers consider”.
- 16 In sections 111(5) and 118 replace “the Assembly” with “the Welsh Ministers”.
- 17 In section 111(5) replace “specified by it” with “specified by them”.
- 18 In section 114(6) replace “appears to it” with “appears to them”.
- 19 In section 117 replace—
- (a) “the National Assembly for Wales proposes” with “the Welsh Ministers propose”;
  - (b) “the Assembly” with “the Welsh Ministers”; and
  - (c) “the Assembly considers” with “the Welsh Ministers consider”.
- 20 In section 118 replace—
- (a) “it may require” with “they may require”; and
  - (b) “the Assembly's” with “the Welsh Ministers”.

*Government of Wales Act 2006 (c. 32)*

- 21 Amend the Government of Wales Act 2006 as follows.
- 22 In Table 2 in paragraph 35 of Schedule 11—
- (a) in the “function” column, omit the entries “Section 102 of the Education Act 2002 (c. 32).” and “Section 108(2)(a) of that Act.”;
  - (b) in the “description” column, omit the entries alongside those omitted from the “function” column by paragraph (a); and
  - (c) in the “function” column, replace “Section 139(1) of that Act.” with—  
 “Section 139(1) of the Education Act 2002 (c. 32).”