

LEARNING AND SKILLS (WALES) MEASURE 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1 Local Curriculum for Pupils in Key Stage 4

3. 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

4. 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:
 5. “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;
 6. “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;
 7. “maintained secondary school”, which is defined as a maintained school which is a secondary school but is not a community or foundation special school;
 8. “regulations” which are defined as regulations made by the Welsh Ministers;
 9. “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

10. 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

11. 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 4-18 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)

12. 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).
13. Subsection (1) places a duty on each local education authority to form at least one 14-16 local curriculum for its area.
14. 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.
15. Subsection (3) describes the learning domains which constitute the categories of each local curriculum.
16. 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).
17. 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.
18. 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.
19. 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 Local curricula: Welsh language (section 116B of the Education Act 2002)

20. This section provides that, in exercising their functions in relation to the local curriculum, local education authorities must promote access to and availability of courses of study which are taught in the Welsh language. This will apply, for example, to the authorities when forming local curricula for their area. In the discharge of this duty, local education authorities will also be under a duty to have regard to guidance issued by the Welsh Ministers. The section further imposes a reporting requirement on local education authorities in regard to the exercise of their functions under the section.
21. Subsection (1) requires each local education authority to exercise its functions in relation to local curricula in such a way as to promote access to and availability of courses of study taught through the medium of Welsh.

22. Subsection (2) provides that local education authorities must have regard to any guidance issued by Welsh Ministers in discharging the duty placed upon them under subsection (1)
23. Subsection (3) provides that guidance issued under subsection (2) may be given to an individual authority, to a class of authorities or to all authorities generally.
24. Subsection (4) requires, within two months of the end of the academic year, a local education authority to prepare a report to be submitted to Welsh Ministers. The report must:
 - (a) describe the courses of study within local curricula for that year, to be taught through the medium of Welsh;
 - (b) describe the number of pupils who elected to follow such courses and how many were given an entitlement to do so;
 - (c) explain the authority's plans in subsequent academic years, to give registered pupils of schools maintained by the authority the opportunity to follow courses of study through the medium of Welsh.
25. Subsection (5) defines "academic year" for the purposes of subsection (4) as the period of 12 months beginning on 1 September.

Section 6 Authorities with more than one local curriculum (section 116C of the Education Act 2002)

26. This section applies where a local authority forms more than one local curriculum under section 116A of the Education Act 2002 (as inserted by section 4 of this Measure).
27. 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 then have the right to elect to follow courses of study included within the local curriculum for their school.

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

28. 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.
29. Subsection (1) sets out the rights of pupils to elect to follow, during Key Stage 4, a course or courses from the applicable local curriculum. These rights, however, are subject to regulations made by the Welsh Ministers under subsection (2).
30. Subsection (2) enables regulations to be made which could, for example, specify the maximum number of courses the pupil may choose to elect to follow from the whole local curriculum, identify the number of 'points' that attach to particular courses (and set a maximum number of aggregate 'points' which must not be exceeded by a pupil's selection of courses) 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 could be delivered by a school or institution other than the one attended when choices are made).

Section 8 Pupils' local curriculum entitlements (section 116E of the Education Act 2002)

31. This section provides that a choice made by a pupil under section 7/116D 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.
32. Subsection (1) specifies 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 116F of the EA 2002 that the pupil is not entitled to follow a chosen course of study.
33. Subsection (2) 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 9 Head teacher's decision as to entitlement (section 116F of the Education Act 2002)

34. Subsection (1) permits head teachers to decide, on specified grounds, that a pupil is not entitled to follow a particular course or courses of study.
35. 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 provision connected with the making of decisions under subsection (1). For example, provision as to the time or date by which decisions are to be made and the procedure to be followed in such cases, for appeals to the governing body of a school or to another person specified in the regulations, the time or date for determining appeals and the procedure to be followed in connection with determining such appeals

36. Subsection (4) requires the head teacher and the person charged with determining appeals under the regulations, to have regard to any guidance issued by Welsh Ministers about the way in which functions are exercised under this section.
37. Subsection (5) enables Welsh Ministers by Order to change the grounds for disentitlement.

Section 10 Delivery of local curriculum entitlements (section 116G of the Education Act 2002)

38. This section sets out the duty placed upon a school governing body to deliver local curriculum entitlements during Key Stage 4. The section provides that where a pupil is entitled to follow a course, the course must be made available to the 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 11 Head teacher's decision to remove entitlement (section 116H of the Education Act 2002)

39. 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).
40. Subsection (3) enables the Welsh Ministers, in regulations, to make further provision connected with the making of decisions under this section including:
 - (a) the decision making procedure;

These notes refer to the Learning and Skills (Wales) Measure 2009 (c.1)

- (b) provision for appeals to the governing body of a school or to another person specified in the regulations;
 - (c) provision regarding the effect of a decision pending determination of an appeal ;
 - (d) The procedure to be followed in connection with determining an appeal.
41. Subsection (4) requires the head teacher and the person charged with determining appeals under the regulations to have regard to guidance issued by the Welsh Ministers as to the exercise of functions under this section.
42. Subsection (5) enables Welsh Ministers by Order to change the grounds for disentitlement.

Section 12 Planning the local curriculum (section 116I of the Education Act 2002)

43. 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.
44. 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.
45. 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.
46. 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 13 Delivery of local curriculum entitlements: joint working (Section 116J of the Education Act 2002)

47. As set out in subsection (1) the objective of this section is to maximise the availability of courses of study included in a local curriculum.
48. Subsections (2) and (4) impose on the local education authority, the governing body of a maintained secondary school and that of a further education institution, a duty to take all reasonable steps to secure the objective of this section.
49. Subsection (3) provides that the duty to take all reasonable steps to secure the objective of the section includes, but is not limited to, a duty to seek to enter into co-operation arrangements where the relevant persons have concluded that it would further the objective of the section to enter into such arrangements.

50. “Co-operation arrangement” is defined in subsection (5) to mean an arrangement whereby any person provides a course of study on behalf of a governing body of a 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.
51. Subsection (6) defines “relevant local curriculum” for the purposes of this section.

Section 14 Joint working: guidance and directions (section 116K of the Education Act 2002)

52. This section relates to the joint-working obligations imposed by section 116J. 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 116J.
53. Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 116J. 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 15 Power to amend learning domains (section 116L of the Education Act 2002)

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

Section 16 Application of local curriculum provisions to children who are not registered pupils (section 116M of the Education Act 2002)

55. 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 17 Application of local curriculum provisions to children who are registered pupils of special schools (section 116N of the Education Act 2002)

56. 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.
57. 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 18 Local curriculum: directions (section 116O of the Education Act 2002)

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

Sections 19 and 20 amend the Education Act 2002

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

59. 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 20 Regulations and orders: Procedure

60. 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 116F (5), 116H (5) and 116L which, because it would alter primary legislation, is made subject to the affirmative resolution procedure.