

Explanatory Memorandum to the Local Curriculum in Higher Education Institutions (Wales) Regulations 2011

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 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 Local Curriculum in Higher Education Institutions (Wales) Regulations 2011.

I am satisfied that the benefits outweigh any costs.

Leighton Andrews

Minister for Children, Education and Lifelong Learning

8 February 2011

- (i) **Description** -These Regulations apply provisions of the Learning and Skills Act 2000 (the 2000 Act) inserted by Part 2 of the Learning and Skills (Wales) Measure 2009 (the Measure) to higher education institutions in Wales. These provisions are concerned with the local curriculum for persons aged 16 to 19. Where a higher education institution provides secondary education or further education to persons under 19, the provisions of the Act relating to the local curriculum will apply in relation to the higher education institution.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** – None.
- (iii) **Legislative Background** -The enabling powers are contained in section 33Q of the 2000 Act as inserted by the Measure. The Regulations will be subject to the negative resolution procedure in accordance with section 152(4A) of the 2000 Act.
- (iv) **Purpose and intended effect of the legislation**
Part 2 of the 2000 Act as amended by Part 2 of the Measure makes provision in relation the local curriculum for students aged 16 to 19. It applies in relation to students at secondary education and at further education institutions. Some students however receive secondary education and further education in higher education institutions. This can happen for example where a further education institution has merged with a higher education institution. These Regulations ensure that in such a case, students aged 16 to 19 attending a higher education institution receive the same entitlement to follow the local curriculum as those attending secondary schools or further education institutions. They also make certain that the body exercising governance over the part of the higher education institution that delivers the 16 to 19 education comes within the provisions of the 2002 Act and that the person holding the post equivalent to a Principal of a further education institution at that part of the institution has the same duties and powers as a Principal of a further education institution. There is currently one such example of a merger between a further education institution and a higher education institution, where Merthyr Tydfil College has merged with the University of Glamorgan. The Regulations therefore ensure that the local curriculum applies in relation to students at Merthyr Tydfil College, and it will also apply in the event of any other future similar merger.
- (v) **Implementation**
If the Regulations were not made it would have the following consequences:
- students aged 16 to 19 attending a higher education institution would not benefit from the provisions of the 2000 Act relating to the local curriculum, so for example any further education

institution which is merged with a University would not fall within the scope of those provisions;

- functions of the Welsh Ministers, Head teachers, Principals, and Governing Bodies under the 2000 Act relating to the local curriculum would not apply in relation to higher education institutions; and
- duties placed upon persons to assist the Welsh Ministers in planning the local curriculum or curricula for a local authority's area would not apply in relation to higher education institutions.

(vi) **Consultation**

Consultation has taken place upon the policy informing the Regulations, as detailed in the Regulatory Impact Assessment (RIA) below.

(vii) **Regulatory Impact Assessment**

a) **Options**

Option 1: Do nothing

- i. If the Local Curriculum in Higher Education Institutions (Wales) Regulations 2011 are not made, the result would be that higher education institutions providing secondary education or further education to students aged 16 to 19 would not come within the provisions on the local curriculum in the 2000 Act. The provisions would apply only in relation to schools and further education institutions. This would mean that further education institutions which have merged with universities would remain outside the scope of these provisions. The consequences of this are that:
 - students aged 16 to 19 attending such a higher education institution would not benefit from the local curriculum entitlements;
 - functions of the Welsh Ministers, Head teachers, Principals, and Governing Bodies under the 2000 Act relating to the local curriculum would not apply in relation to higher education institutions; and
 - duties placed upon persons to assist the Welsh Ministers in planning the local curriculum or curricula for a local authority's area would not apply in relation to higher education institutions.

This would also have sectoral implications, in that potentially one or more institutions, although technically within the higher education sector, in fact delivering the same courses as institutions in the further education sector, would not be subject to the same legal framework. This would fundamentally undermine the policy objective to include the whole 16 – 18

education sector to ensure that all students have the benefit of the local curriculum provisions within the 2000 Act.

Option 2: Introduce Regulations

If the Local Curriculum in Higher Education Institutions (Wales) Regulations 2011 are made, the result will be that students aged 16 to 19 attending higher education institutions will be treated in the same way as those attending secondary schools and further education institutions. Any further education institutions which have merged with universities will be included within the scope of the local curriculum provision in the 2000 Act and therefore will be treated on a level playing field with further education institutions. This will ensure uniform application of the provisions of the 2000 Act as the statutory force behind 14-19 Learning Pathways. This would reinforce the policy objective to include all learners and ensure that all students have the benefit of the local curriculum entitlements.

b) Costs and Benefits

Option 1: Do nothing

There are no discernible or specific benefits from not introducing the Regulations. If they are not made higher education institutions providing secondary education or further education would remain outside the scope of the provisions of the 2000 Act on the local curriculum, potentially denying the application and benefits of those provisions to post 16 students in the particular areas concerned.

There are no direct costs implications from not introducing the Regulations. However it would mean that any higher education institution providing secondary or further education to those aged 16 to 19, which would be a recipient of public funding, would not be subject to the same regulatory framework as the remainder of the sector.

Option 2: Introduce Regulations

A number of benefits will accrue from implementation of these Regulations;

- there will be uniform application of the provisions of the 2000 Act on the local curriculum for students aged 16 to 19 regardless of whether they attend a secondary school, further education institution or higher education institution;
- duties placed upon the Welsh Ministers by the 2000 Act in relation to the local curriculum will be exercisable in relation to secondary schools, further education institutions and

higher education institutions (i.e. ensuring that Welsh Ministers have the appropriate necessary powers);

- provisions of the 2000 Act in relation to the local curriculum which apply to Head teachers, Principals and or Governing Bodies will apply in relation to higher education institutions; and
- duties placed upon persons to assist the Welsh Ministers in planning the local curriculum or curricula for a local authority's area will similarly apply in relation to higher education institutions.

This is the most effective option which fully addresses the policy objectives. The National Planning and Funding System (NPFS) has been designed to fund learning differentiated by volume and particular course type/requirements; the maximum entitlement set out in Regulations is consistent with NPFS practice and individual learning funding limits. Additional costs associated with the development of and pump prime funding of new provision can be met from within the £20.62 million revenue 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.

c) Competition Assessment

The Regulations will have no effect on competition.

d) Consultation

A consultation exercise was carried out between 11 November 2010 and 6 January 2011. During that period officials met with representatives of Merthyr Tydfil College. Representatives were supportive of the draft Regulations.

e) Post implementation review

The effect of the Regulations will be monitored annually via the submission of Annual Network Development Plans and associated documentation. We shall also request feedback from Higher Education Wales following one year of the operation.

f) Summary

Currently Part 2 of the 2000 Act as amended by Part 2 of the Measure makes provision about the local curriculum in relation to secondary schools and further education institutions only. The Regulations are intended to ensure that Part 2 of 2000 Act applies where students aged 16 to 19 receive secondary education and further education in higher education institutions, for example after a further education institution has merged with a university.

In these circumstances, Regulations are necessary to make certain that such students receive the same entitlements as those attending secondary schools or further education institutions, that the body exercising governance over the part of the higher education institution that delivers the 16 to 19 education comes within the provisions of the 2000 Act, and that the person holding the post equivalent to a Principal of a further education institution within the part of the higher education institution that delivers the 16 to 19 education is bound by the provisions in the same manner as a Principal of a further education institution.

There are no costs additional to funding already agreed for the implementation of the Measure as part of 14 -19 learning Pathways. 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 in relation to higher education institutions and in terms of ensuring consistent application of the policy across the board.