

Explanatory Memorandum to 2011 No. (W.) The Education (Local Curriculum for Students Aged 16 to 18) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the 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 Education (Local Curriculum for Students Aged 16 to 18) (Wales) Regulations 2011.

I am satisfied that the benefits outweigh any costs.

Leighton Andrews

Minister for Children, Education and Lifelong Learning

20 January 2011

(i) **Description** – The Education (Local Curriculum for Students Aged 16 to 18) (Wales) Regulations 2011 are made under section 33D(3), 33E(3), 33G(3), 33I(3) and 152 of the Learning and Skills Act 2000, as amended by the Learning and Skills (Wales) Measure 2009 (“the Measure”). These sections of the Measure enable Regulations to be made regarding pupils’ choices of local curriculum courses (33D), the head teacher’s or principal’s decision as to entitlement (33E), the determination of a pupil’s relevant school or institution (33G) and the head teacher’s or principal’s decision to remove entitlement (33I). These Regulations set out the relevant detail in each respective case and the procedures to be followed regarding the head teacher’s or principal’s decisions as to entitlement and removal of entitlement.

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

None

(iii) **Legislative Background** – The Regulations are made under 33D(3), 33E(3), 33G(3), 33I(3) and 152 of the Learning and Skills Act 2000 and will be subject to the negative resolution procedure.

The Regulations will come into force on the 14 February 2011.

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

The Measure makes law for the education of school pupils and young people in education or training aged 14-19¹ in Wales. It amends the law for learners in Wales in education and training aged 14-19, set out in the Education Act 2002 and the Learning and Skills Act 2000. It also makes amendments to the Education Act 1997. The statutory provisions provide the means by which a legal framework can be put in place that will reflect 14-19 Learning Pathways policy and provide the means to develop that legal framework as policy develops.

The key purpose of the Measure is to create a right for learners aged 14-19 in Wales to elect to follow a course of study from a local area curriculum. The local area curriculum will contain a wide range of options of study.

Regulation 3 concerns the determination by a head teacher of a pupil’s relevant school or institution and time limits to be followed should a pupil request this.

Regulation 4 stipulates that a pupil is entitled to elect courses to a maximum of 200 points (excluding key skills qualifications and the Welsh baccalaureate qualification).

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

Regulation 5 provides that a pupil must make his/her election regarding choice(s) of course during the spring term.

Regulation 6 concerns the head teacher's or principal's making of the decision as to entitlement, and time limits, and procedures to be followed in each case and for subsequent review of this decision by the head teacher or principal if a student requests this.

Regulation 7 concerns the head teacher's or principal's decision to remove entitlement, and time limits and procedures to be followed in each case and for subsequent review of this decision by the head teacher or principal if a student requests this.

Regulation 8 is a technical regulation setting out requirements for service of notices and calculating time periods in respect of the time limits and procedures set out in Regulations 3, 6 and 7, referred to above.

(v) **Implementation**

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

- i. there would be no maximum entitlement which could result in disproportionate resources being allocated to a minority of students;
- ii. there would be no procedure covering a pupil's request for the determination of their relevant school or institution by their head teacher;
- iii. there would be no time limit for the making of the student's election as to courses of study;
- iv. there would be no procedure or time limits for the making of the decision as to entitlement by the head teacher or principal; there would be no review procedure; and
- v. there would be no procedure or time limits for the making of the decision as to entitlement by the head teacher or principal; and no review procedure.

(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

The key purpose of the Measure is to create a right for learners aged 14-19 in Wales to elect to follow a course of study from a local area curriculum.

The development of 14-19 Learning Pathways is a key element within the education strategy for Wales. The aim of 14-19 Learning Pathways is to transform provision and support for learners, raise achievement and attainment, prepare young people for high skilled employment or higher education and enable Wales to compete in Europe in the 21st Century.

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

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

The proposed Regulations relevant to this specify the maximum number of courses of study a pupil has the right to elect to follow.

The Measure specifies the grounds upon which a head teacher or principal may decide that, in certain circumstances, a learner is not entitled to follow a course they had elected to study. The proposed Regulations cover the making of these decisions, including reviews, time limits and procedures.

Option 1 – Do Nothing

The implications of doing nothing are that pupil's entitlement to elect a course of study, and to follow their elected course would be unlimited. The provisions regarding the making of elections by pupils and for the making by the head teacher or principal of the decision as to entitlement and removal thereof would not be introduced.

Option 2 – Provide Guidance

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

Option 3 – Introduce Regulations

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

- a maximum entitlement for each student to ensure a fair allocation of resources to all students;
- clear process and time limits for the determination of a pupil's relevant school or institution;
- a clear limit for the making of the pupil's elections as to courses of study;
- clear processes, procedures and time limits for the making of the decision as to a student's entitlement by the head teacher or principal and similarly for reviews; and
- clear processes, procedures and time limits for the making of the decision regarding the removal of a student's entitlement by the head teacher or principal and similarly for reviews.

In turn this would:

- secure access to wider curriculum choice for 14-19 year old learners across Wales including a learning core;
- support the Welsh legislative framework under the Measure which can be developed to meet changing educational needs 14-19; and
- be most likely to facilitate the aim that *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015.*

b) Costs and Benefits

Option 1 – Do Nothing

If the Regulations were not made there would be no maximum entitlement for students, which could have costs implications in terms of student demands, and a possible unfair allocation of resources to individual students and inefficient use of 14 -19 funding in terms of failure to achieve key policy outcomes.

There could also be potential costs implications and the risks of incurring legal costs in terms of the failure to regulate clearly in respect of the head teacher's or principal's decision as to entitlement or removal thereof in the absence of appropriate Regulations.

The potential for improvements in participation, achievement and attainment would also be less likely to be realised.

Key aspects of the Learning and Skills (Wales) Measure 2009 would not be properly or effectively implemented.

Option 2 – Provide Guidance

Issuing guidance could partially address the objectives that have been outlined. However, it is not possible to issue such guidance in respect of choices of elections and the decision and removal of entitlement by the head teacher or principal, for the reasons indicated above. The effect would therefore be a marginal improvement on Option 1.

Option 3 – Introduce Regulations

This is the most effective option which fully addresses the policy objectives. The National Planning and Funding System (NPF5) has been designed to fund learning differentiated by volume and particular course type/requirements; the maximum entitlement set out in Regulations is consistent with NPF5 practice and individual learner funding limits. Additional costs associated with the development of and pump priming 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 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

Consultation has taken place on the policy to inform the Regulations. Consultation on the policy informing the Regulations under sections 25, 26, 28 and 30 of the Measure, (sections 33D(3), 33E(3), 33G(3) and 33I(3) of the Learning and Skills Act 2000 respectively), which form the pretext of the current draft Regulations, took place between 20 May and 14 July 2009. This consisted of the Welsh Assembly Government leading discussions with the Network Executive, Extended Network Advisory Group and key stakeholders in individual local authority areas

The consultation was supported by 26 consultation events primarily based upon the 14-19 Networks. These broadly coincide with local authority areas. In all, 35 responses were received, including sixteen written responses from networks and seven from trade unions. Other respondents included Fforwm (Colegau Cymru), the National Union of Students and Governors Wales. Additional individual responses were received from Estyn, awarding organisations and individual learning providers. The consultation document was available on the Welsh Assembly Government's website at:

<http://wales.gov.uk/consultations/education/learningandskills/?lang=en&status=closed>

e) Post implementation review

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

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

f) Summary

The Regulations are required in order to implement provisions made in the Learning and Skills (Wales) Measure 2009 regarding, pupils' choices of local curriculum courses, the head teacher's or principal's decision as to entitlement, the determination of a pupil's relevant school or institution, and the head teacher's or principal's decision to remove entitlement . They provide the means by which a legal framework can be put in place that will reflect 14-19 Learning Pathways policy.

Costs on the Welsh Assembly Government will be met from the existing funding streams and 14-19 Learning Pathways grant as previously indicated. There are clear and significant potential benefits of the Regulations, in terms of the full and effective implementation of the Measure.