

Proposals for a Learning and Skills (Wales) Measure 2008

- Audience** This will be of relevance to all those involved in the delivery of Education in the 14-19 age range and will also be of interest to a wide range of organisations such as parents and young people and other groups.
- Overview** This consultation document presents the Welsh Assembly Government's draft proposals for an Assembly Measure for Learning and Skills. The power to make this Measure is contained in section 93 of the Government of Wales Act 2006 and the Assembly's competence to legislate on this matter is to be found in Matters 5.4, 5.7 and 5.8 in field 5 of Schedule 5 to that Act.
- Action required** The consultation will end on the 29th April 2008 and responses should be received by that date. You may wish to respond using the suggested questions in the last section of this paper or by providing more general comments on any aspect of these proposals.
- The Welsh Assembly Government will publish a summary of the responses to this document. Normally, the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response, please state this expressly in your response.
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- Additional copies** Further copies may be obtained at the above address. This document can also be accessed from the Welsh Assembly Government website at:
<http://new.wales.gov.uk/topics/educationandskills>
- Related documents** Government of Wales Act 2006
Learning Pathways 14-19 Guidance I
Learning Pathways 14-19 Guidance II

MINISTERIAL FOREWORD



The draft proposals set out in this consultation document represent a significant step forward in the implementation of Pathways for young people in Wales. The proposed Learning and Skills (Wales) Measure 2008 will underpin the Welsh Assembly's Government's policy for 14-19 provision, which has been firmly built on the experience and expertise of practitioners from all sectors of education in Wales. The policy has been developed in partnership, beginning with The Learning Country in 2001, and recently reinforced in The Learning Country: Vision into Action in 2006.

Bringing forward a Measure to give statutory support to the Learning Pathways policy in this Assembly session demonstrates the commitment of the Assembly Government to the transformation of 14-19 provision for learners. The Learning and Skills (Wales) Measure 2008 will ensure that Learners of all abilities aged 14-19 are able to choose from a wide range of applied and general programmes, from a collaborative options menu. Learners will receive wider experiences and opportunities including the development of key skills. Learners will also have access to both learning and personal support and to careers information advice and guidance, to ensure they are able to take full advantage of opportunities made available to them.

In order to secure effective and efficient provision, learning settings will need to work together in real co-operation. We recognise that this is a paradigm shift from the concept of individual institutional provision, to one in which a range of settings work together to secure a broad options menu for learners.

14-19 Learning Pathways policy is clearly set out in the Guidance documents issued in 2004 and 2006, and is being translated into practice by the 14-19 Networks throughout Wales. This draft Measure is designed to support those developments and ensure equality of opportunity in all key elements of Learning Pathways for learners in learning settings in Wales.

Other significant developments which will inform the Measure and the development of 14-19 Learning Pathways policy include relevant recommendations from Sir Adrian's Webb's review of further education and the Welsh Assembly Government's Skills and Employment Strategy. The Skills and Employment Strategy will include the response to both Lord Leitch's report on skills and Sir Adrian's Webbs' recommendations.

This consultation document invites you to comment on the draft Measure. I hope you will take this opportunity to continue the partnership working which has characterised the development of this policy from the beginning. You will find questions to guide your responses at the end of the document, though we will be happy to consider comments in other formats. Your responses will be

considered carefully and will help inform the Welsh Assembly Government's final proposals.

I hope this consultation document will stimulate debate and help drive forward the 14-19 Learning Pathways policy. I look forward to receiving your responses.

John Griffiths AM
Deputy Minister for Skills

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SECTION 1: SUMMARY OF THE DRAFT MEASURE PROPOSALS

Legislative Context of Assembly Measures

The Government of Wales Act 2006 created new powers for the National Assembly for Wales to pass its own laws which will be known as ‘Assembly Measures’. An Assembly Measure is akin to a Bill proposed to the Houses of Parliament. A Measure can be proposed by the Welsh Assembly Government or by any other Assembly Member. This consultation presents the Welsh Assembly Government’s proposals for the Learning and Skills (Wales) Measure 2008.

The power to make this Measure is contained in section 93 of the Government of Wales Act 2006¹ and the Assembly’s competence to legislate on this matter is to be found in Matters 5.4, 5.7 and 5.8 in Field 5 of Schedule 5 to that Act². These matters permit the Assembly to make provision about *“the curriculum in schools maintained by local education authorities”, “entitlement to primary, secondary and further education and to training” and “the provision of services that are intended to encourage, enable or assist people to (a) participate effectively in education and training, (b) to take advantage of opportunities for employment, or (c) to participate effectively in the life of their communities.”*

This consultation exercise is a pre-legislative step. Following consultation, the Welsh Assembly Government anticipates introducing final proposals for a Learning and Skills (Wales) Measure 2008. The Welsh Assembly Government will also consider the feedback from the consultation on the new Wales Skills and Employment Strategy in finalising the Measure.

The Need for a Measure

We have concluded that in order to provide equality of opportunity for 14-19³ learners in Wales, there is a need to legislate in respect of the options that are made available to learners during Key Stage 4 and to ensure that the necessary support is available to enable learners to maximise their learning opportunities. We also believe that for 16-19 year old learners the best approach is to secure access to wide ranging learning provision and to wider learning and support in all key elements of the Learning Pathways framework, in a manner that is broadly similar to that required for 14-16 year olds. This will encourage and support learners to take advantage of appropriate opportunities in order to fulfil their potential. This Measure is intended to facilitate the implementation of 14-19 Learning Pathways policy for 14-19 year old learners across Wales.

¹ 2006 c.32.

² As added by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, S.I. 2007/910, which converted the regulation making power contained in section 178(1)(i) of the Education and Training Act 2006, and repealed sections 178 and 179 of that Act.

³ That is those aged 14 up to 19th birthday

POLICY BASIS FOR THE PROPOSED MEASURE

The 14-19 Learning Pathways policy has been developed from evidence of what works best for learners. The 14-19 Learning Pathways framework published in '14-19 Learning Pathways Guidance II', sets out best practice in enabling young people to remain in learning, to take advantage of opportunities for employment and to participate responsibly and effectively in their communities.

This Measure aims to establish a legislative framework that will underpin the policy approach of achieving equality of opportunity and experience for 14-19 year old learners, by enhancing the range of options for study within the 14-19 age range. The framework for Learning Pathways includes six key elements which can be combined in ways which meet the needs of all learners, both with regard to learning provision and the support learners need, to take advantage of such opportunities. The six key elements are in two parts. The first three deal with provision and the second three with support:

1. Individual learning pathway including formal, non-formal and informal learning experiences in and outside a learning setting.

In order to gain the wider skills and competences they need for work, community and family life, learners need an appropriate balance between these three strands. This will benefit disadvantaged learners.

2. Wider choice and flexibility from a collaborative options menu.

The option menu for each learner, referred to in this Measure as the local curriculum, reflects their entitlement to a choice of programmes of study leading to qualifications from the wide range set out in the Approved List under section 99 of the Learning and Skills Act 2000.

14-16 year olds on the roll of maintained schools will continue to be entitled to the Basic Curriculum⁴. In addition to the Basic Curriculum this Measure sets out arrangements for learners to have an entitlement to choose from a wide range of courses that make up the formal strand of an individual learning pathway.

Welsh Ministers have a duty to encourage individuals to actively participate in post 16 education and training and to encourage employers to participate in the provision of post 16 education and training. The proposals set out in this Measure seek to strengthen this duty to enable, encourage and support all 16-19 year olds learners to remain in education, training or employment linked to training. The development of

⁴ The Basic Curriculum includes the National Curriculum, religious education, personal and social education, work related education, careers education and sex education.

an entitlement to a wide choice for post 16 learners is intended to support the fulfilment of this duty.

The Measure specifies domains in which a range of choices will need to be offered, the 5 mandatory domains will need to include options at appropriate levels of attainment.

3. A Learning Core providing wider experiences and activities to develop learning, personal and emotional skills.

The Learning Core includes aspects of the Basic Curriculum for 14-16 year olds in maintained schools such as religious education, personal and social education, work related education and sex education. These form an entitlement for 14-16 year olds and an enhancement for 16-19 year olds. In addition, careers education is a legal requirement of all 14-19 year olds in schools and colleges. The Welsh Assembly Government will issue further detailed guidance on these aspects, to assist all learning settings to support and encourage the wider range of learning experiences for all 14-19 year old learners.

4. Learning Coach.

Learning coach support forms one of the key elements of 14-19 Learning Pathways policy. All 14-19 year olds are required to have access to learning coach support to assist them in:

- developing their learning skills;
- making better use of, and developing, their own learning styles,
- maximising their own development in a variety of areas of intelligence including emotional intelligence.

Directions and guidance, to which local authorities and governing bodies of maintained schools and further education institutions will have to have regard, will be issued under section 123 of the Learning and Skills Act 2000 and provisions of the Measure.

5. Access to personal support.

Most young people experience personal, social, health and emotional issues during their 14-19 phase. For many, these personal issues present real and significant barriers to learning, on a temporary or a more long term basis. Local Authorities already have a duty to provide, secure or participate in the provision of youth support services for 11-25 year olds under the Learning and Skills Act 2000. Young People's Partnerships in each Local Authority area are charged with taking this forward as part of Extending Entitlement.

More specific guidance, to which Local Authorities, maintained schools and further education institutions would have to have regard, will be developed to support Young People's Partnerships, in making personal support available and accessible to all 14-19 year olds in their area.

6. Careers information, advice and guidance.

Careers information, advice and guidance will need to evolve to reflect the different circumstances created by the implementation of 14-19 Learning Pathways. This can be achieved within existing legislation, and will be covered in future guidance within the business planning framework for Careers Wales companies. We also expect Careers Wales to make a contribution to future Learning Coach developments.

The proposals in the Learning and Skills (Wales) Measure 2008 underpin the six key elements in securing entitlement for all learners and in ensuring cooperative arrangements to secure efficient and effective delivery.

THE MEASURE.

1. This Measure places a duty on the LEAs to produce an options menu for 14-16 Learners in Wales

- This will ensure that learners have an entitlement to a wide range of choices of academic and vocational course options.
- The Measure imposes a lead coordinating role for Local Authorities in securing the entitlements for learners, schools and FEIs are under a duty to assist the LEA in the planning of the local curriculum. Local Authorities schools and FEIs are each under a duty to consider cooperation as an option in delivering the entitlements.
- The duty to produce the options menu for 16-19 year olds lies with the Welsh Ministers
- The Local Authority will have a duty to form a local curriculum to ensure that courses are available which meet the requirements set out in regulations to be developed to support the Measure.

2. This Measure places a duty on LEAs, maintained school governing bodies, Head teachers and Principals and Governing Bodies of FEI's to consider whether to collaborate to maximise the availability of choice in constructing the options menu.

- In order to secure an options menu that offers a wide range of choice, learning settings will need to work together. Governing bodies of any maintained school and any further education institution in a local authority area, will be required to consider how they need to cooperate in order to make efficient and effective use of resources to secure a wider choice of courses for learners in the 14-19 age range.

- School governing bodies will need to cooperate with other schools and further education institutions (and with private sector learning settings where appropriate) to secure the wide range of entitlements learners will have under these proposals. The Measure proposes a duty on governing bodies to ensure that all learners on their roll have access to their full entitlement, and a duty, where necessary, to consider cooperating with other schools and further education institutions to achieve this.
- The co-operation of further education institutions and, in time, learning settings which are private training providers will be secured through contract and funding arrangements.

3. This Measure enables the Welsh Ministers to make regulations in respect of the Options Menu.

- The detailed parameters of the range of courses to be available will be set out in regulations to support this Measure.
- The regulations will specify the minimum number of courses that have to form part of the local curriculum, set out the minimum number of those courses which should be vocational in nature and the minimum number of courses in each of the five domains. The regulations can also set out the maximum number of courses which a learner is entitled to elect to study.

It is not anticipated that any single learning setting will be able to offer the wide range of provision which will be required under this Measure.

4. This Measure provides for Welsh Ministers to direct governing bodies of maintained schools and FEIs, and to issue guidance in respect of wider experiences of learners.

- Detailed guidance will be developed to which all learning settings will have to have regard, setting out how all 14-19 year olds should be entitled to activities and experiences which will enable them to develop and obtain qualifications in key skills or any future replacement qualification approved by Welsh Ministers.
- Some aspects of the Learning Core are set out as enhancements for 16-19 year olds, rather than statutory entitlements. The expectations for 16-19 year olds will be set out in detailed guidance so that all learning settings can support learners in accessing the wider experiences envisaged within the Learning Core.

Co-operation and collaboration are part of our distinctive partnership approach in Wales. It is believed that there is extensive evidence that partnerships can work together in the interests of learners in this way.

SUMMARY OF THE PROPOSALS

In summary the draft Measure will:

- underpin the implementation of 14-19 Learning Pathways to secure equality of opportunity for all 14-19 learners in Wales;
- secure learners' entitlement to a wide range of courses of study, including general (academic) and applied (vocational) options and with all five domains of learning available;
- provide a regulation making power to define the range of options to be made available to meet learners' entitlements;
- provide a regulation making power to set out the grounds on which a head teacher or principal may disentitle a learner from specific provision; and
- allow directions to be issued and guidance to be developed to enhance learning coach and personal support and access to activities and experiences to develop Key Skills

SECTION 2

Proposed Learning and Skills (Wales) Measure 2008

[j051]

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 [] and approved by Her Majesty in Council on [], enacts the following provisions:-

PART 1

Local curriculum for pupils in Key Stage 4

1 Interpretation [j010]

(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—

““learning domain” is to be construed in accordance with section 116A;

“local curriculum” is to be construed in accordance with section 116A and, in relation to a pupil’s area, means the local curriculum formed by the local education authority which maintains the pupil’s school;”.

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

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

2 Duty to implement general requirements [j011]

(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 for a local education authority’s area.”

3 Basic curriculum for every maintained school in Wales [j012]

- (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 116C, and”.

4 Formation of the local curriculum for pupils in Key Stage 4 [j013]

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

“The local curriculum

116A Formation of the local curriculum for pupils in Key Stage 4

- (1) Each local education authority in Wales must form for its area a local curriculum for pupils in the fourth key stage.
- (2) A local curriculum must consist of suitable courses of study—
 - (a) falling within a category in subsection (3) (the “learning domains”); and
 - (b) from time to time selected by a local education authority to form part of the local curriculum for its area.
- (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 the local curriculum for its area as it sees fit.
- (5) Regulations may make provision as to the formation of a local curriculum, including in particular provision—

- (a) specifying the learning domain into which a course of study falls;
 - (b) 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;
 - (c) 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;
 - (d) 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.
- (7) Regulations under subsection (5) may make different provision in relation to different local curricula.”

5 Pupils’ choices of local curriculum courses [j014]

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

“116B Pupils’ choices of local curriculum courses

- (1) A registered pupil of a maintained 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 area. But this is subject to regulations made under subsection (2).
- (2) Regulations may make provision as to the making of elections under this section. The provision that may be so made includes 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) specifying the combination of courses of study of different types that a pupil has the right to elect to follow;
- (c) as to the period during which elections are to be made.”

6 Pupils’ local curriculum entitlements [j015]

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

“116C Pupils’ local curriculum entitlements

- (1) During the fourth key stage, a pupil who has made an election under section 116B(1) is entitled to follow the elected course of study at, or under arrangements made by the governing body of, his or her school unless—
 - (a) the pupil ceases to be a registered pupil of that school; or
 - (b) subsection (2) applies.
- (2) This subsection applies if, before the beginning of the fourth key stage, the head teacher of the pupil’s school has decided under section 116D that the pupil is not entitled to follow the course of study.
- (3) 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.”

7 Head teacher’s decision as to entitlement [j016]

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

“116D Head teacher’s decision as to entitlement

- (1) If satisfied that any of the grounds provided for under subsection (2) apply, the head teacher of a pupil’s school may decide that the pupil is not entitled to follow a course of study which the pupil has elected to follow under section 116B(1).
- (2) The Welsh Ministers must make regulations specifying the grounds on which a head teacher may decide under subsection (1) that a pupil is not entitled to follow a course of study.
- (3) Regulations may make provision as to the making of decisions under this section. The provision that may be so made includes in particular provision as to the time or date by which decisions are to be made.
- (4) A head teacher must have regard to any guidance given by the Welsh Ministers as to the exercise of his or her functions under this section.”

8 Delivery of local curriculum entitlements [j017]

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

“116E Delivery of local curriculum entitlements

The entitlement conferred on a pupil under 116C(1) is to be taken to be satisfied if each course of study that he or she is entitled to follow is made available to the pupil during the fourth key stage by or on behalf of the governing body of his or her school.”

9 Head teacher’s decision to remove entitlement [j037]

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

“116F Head teacher’s decision to remove entitlement

- (1) If satisfied that any of the grounds provided for under subsection (2) apply, the head teacher of a pupil’s school may decide that a pupil is no longer entitled to follow a course of study that the pupil was entitled to follow under section 116C.
- (2) The Welsh Ministers must make regulations specifying the grounds on which a head teacher may decide under subsection (1) that a pupil is no longer entitled to follow a course of study.
- (3) A head teacher must have regard to any guidance given by the Welsh Ministers as to the exercise of his or her functions under this section.”

10 Planning the local curriculum [j018]

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

“116G Planning the local curriculum

- (1) The following persons must assist a local education authority in planning the local curriculum for its area—
 - (a) the governing body and head teacher of any maintained school which is—
 - (i) maintained by the authority; and
 - (ii) is a secondary school;
 - (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” means the process by which a local education authority decides under section 116A which courses of study to include in the local curriculum for its area.
- (3) The persons mentioned in subsection (1) must—
 - (a) have regard to any guidance; and
 - (b) comply with any directions,

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

11 Delivery of local curriculum entitlements: joint-working [j019]

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

“116H 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 for the area of the local education authority by which it is maintained, the governing body of a maintained school which is a secondary school—
 - (a) must consider whether it would further the objective of this section to enter into any co-operation arrangements; and
 - (b) if it concludes that entering into any such arrangement would further that objective, it must seek to do so.
- (3) In relation to the local curriculum for its area, a local education authority—
 - (a) must consider whether it would further the objective of this section to make arrangements with any person for the provision, on behalf of the governing body of a maintained school which is a secondary school, of a course of study included in that local curriculum; and
 - (b) if it concludes that entering into any such arrangement would further that objective, it must seek to do so.
- (4) The governing body of an institution within the further education sector in Wales must consider whether or not to enter into—
 - (a) a co-operation arrangement proposed by a governing body of a maintained school under subsection (2); and
 - (b) an arrangement proposed by a local education authority under subsection (3).
- (5) In this section and section 116I “co-operation arrangements” means arrangements under which any person provides, on behalf of the governing body of a maintained school which is a secondary school, a course of study included within the local curriculum for the area of the local education authority by which the school is maintained.
- (6) Regulations may extend the definition of “co-operation arrangements” in subsection (5) to include—
 - (a) arrangements made under regulations under section 26 (collaboration between schools); and

- (b) arrangements made under regulations under section 166 of the Education and Inspections Act 2006 (collaboration arrangements: maintained schools and further education bodies).”

12 Joint-working: guidance and directions [j020]

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

“116I Joint-working: guidance and directions

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

13 Power to amend learning domains and suspend local curriculum [j021]

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

“116J Power to amend learning domains and suspend local curriculum

- (1) The Welsh Ministers may by order—
 - (a) amend any provision of subsection (3) of section 116A; or
 - (b) provide that, while the order remains in force, that section is not to have effect.

- (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).”

14 Application of local curriculum provisions to children who are not registered pupils [j047]

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

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

- (1) The Welsh Ministers may by regulations apply the provisions of sections 116A to 116I 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.
- (4) Where an order has been made under section 116J(1)(a), the reference in subsection (1) to sections 116A to 116I is a reference to those sections as amended by that order.”

15 Powers to alter or remove requirements for fourth key stage (j038)

- (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).”

16 Regulations and orders: procedure [j041]

- (1) The Education Act 2002 (c. 32) is amended in accordance with this section.
- (2) In section 210(6A), after “section 32(8)” insert “116A(5), 116B(2), 116D(2) or (3), 116F(2), 116H(6) or 116K(1)”.

(3) After section 210(6A) insert—

“(6AB) No order shall be made by the Welsh Ministers under section 107 or 116J 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 2

Local curriculum for students aged 16 to 18

17 Education and training for persons aged 16 to 18 [j022]

(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 33C”.

18 Formation of the local curriculum for students aged 16 to 18 [j023]

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

“The local curriculum

33A Formation of the local curriculum for students aged 16 to 18

- (1) The Welsh Ministers must form for the area of each local education authority a local curriculum 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—
 - (a) falling within a category in subsection (3) (the “learning domains”); and
 - (b) 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) Regulations may specify the learning domain into which a course of study falls.”

19 Students’ choices of local curriculum courses [j024]

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

“33B 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), a course or courses of study included within the local curriculum for the local education authority area in which his or her relevant school or institution is situated. But this is subject to regulations made under subsection (3).
- (2) The period—
 - (a) begins on the first day of the academic year subsequent to the person having ceased to be of compulsory school age; and
 - (b) ends on the day on which the person attains the age of nineteen.
- (3) Regulations may make provision as to the making of elections under this section. The provision that may be so made includes 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) specifying the combination of courses of study of different types that a pupil has the right to elect to follow;
 - (c) as to the period during which elections are to be made;
 - (d) as to the date or time by which a head teacher is to make a determination under subsection (4).
- (4) For the purposes of this section and sections 33C to 33F, a pupil’s relevant school or institution is such school or institution whose governing body the head teacher of the pupil’s school has determined is likely to be responsible for providing (or making arrangements for the provision of) the majority of his or her education once he or she has ceased to be of compulsory school age.”

20 Students’ local curriculum entitlements [j025]

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

“33C Students’ local curriculum entitlements

- (1) During the period described in section 33B(2), a student who has made an election under that section is entitled to follow the elected course of study at, or under arrangements made by the governing body of, his or her relevant school or institution unless—
 - (a) the governing body of the 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) subsection (2) applies.
- (2) This subsection applies if, before the beginning of the period described in section 33B(2), the head teacher or principal of the student’s relevant school or institution has decided under section 33D that the student is not entitled to follow the course of study.
- (3) 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 period described in section 33B(2) the course is to begin.”

21 Head teacher’s or principal’s decision as to entitlement [j026]

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

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

- (1) If satisfied that any of the grounds provided for under subsection (2) apply, the head teacher or principal of a student’s relevant school or institution may decide that the student is not entitled to follow a course of study which the student has elected to follow under section 33B.
- (2) The Welsh Ministers must make regulations specifying the grounds on which a head teacher or principal may decide under subsection (1) that a student is not entitled to follow a course of study.
- (3) Regulations may make provision as to the making of decisions under this section. The provision that may be so made includes in particular provision as to the time or date by which decisions are to be made.
- (4) A head teacher or principal must have regard to any guidance given by the Welsh Ministers as to the exercise of his or her functions under this section.”

22 Delivery of local curriculum entitlements [j027]

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

“33E Delivery of local curriculum entitlements

The entitlement conferred on a person under section 33C(1) is to be taken to be satisfied if each course of study that he or she is entitled to follow is made available to the person during the period mentioned in section 33B(2) by or on behalf of the governing body of his or her relevant school or institution.”

23 Head teacher’s or principal’s decision to remove entitlement [j044]

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

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

- (1) If satisfied that any of the grounds provided for under subsection (2) apply, the head teacher or principal of a student’s relevant school or institution may decide that a student is no longer entitled to follow a course of study that the student was entitled to follow under section 33C.
- (2) The Welsh Ministers must make regulations specifying the grounds on which a head teacher or principal may decide under subsection (1) that a student is no longer entitled to follow a course of study.
- (3) A head teacher or principal must have regard to any guidance given by the Welsh Ministers as to the exercise of his or her functions under this section.”

24 Planning the local curriculum [j028]

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

“33G Planning the local curriculum

- (1) The following persons must assist the Welsh Ministers in planning the local curriculum 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” means the process by which the Welsh Ministers decide under section 33A which courses of study to include in a local curriculum.
- (3) The persons mentioned in subsection (1) must—
 - (a) have regard to any guidance; and
 - (b) comply with any directions,

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

25 Delivery of local curriculum entitlements: joint-working [j039]

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

“33H 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 for the area of the local education authority by which it is maintained, the governing body of a maintained school—
 - (a) must consider whether it would further the objective of this section to enter into any co-operation arrangements; and
 - (b) if it concludes that entering any such arrangement would further that objective, it must seek to do so.
- (3) In relation to the local curriculum for the local education authority area in which an institution is situated, the governing body of the institution—
 - (a) must consider whether it would further the objective of this section to enter into any co-operation arrangements; and
 - (b) if it concludes that entering any such arrangement would further that objective, it must seek to do so.
- (4) In relation to the local curriculum for its area, a local education authority—
 - (a) must consider whether it would further the objective of this section to make arrangements with any person for the provision, on behalf of the governing body of a maintained school or institution, of a course of study included in that local curriculum; and
 - (b) if it concludes that entering into any such arrangement would further that objective, it must seek to do so.
- (5) In this section and section 33I “co-operation arrangements” means—
 - (a) in relation to a maintained school, arrangements under which any person provides on behalf of the governing body of the school a course of study included within the local curriculum for the area of the local education authority by which the school is maintained;
 - (b) in relation to an institution, arrangements under which any person provides on behalf of the governing body of the institution a course of study included within the local curriculum for the local education authority area in which the institution is situated.
- (6) Regulations may extend the definition of “co-operation arrangements” in subsection (5) to include—

(a) arrangements made under regulations under section 26 of the Education Act 2002 (collaboration between schools);

(b) arrangements made under regulations under section 166 of the Education and Inspections Act 2006 (collaboration arrangements: maintained schools and further education bodies).”

26 Joint-working: guidance and directions [j040]

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

“33I 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 by the Welsh Ministers as to the exercise of their functions under section 33H.
- (2) Guidance given under subsection (1) may relate to the contents of co-operation arrangements and arrangements entered into following a proposal under section 33H(4).
- (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 and arrangements described in section 33H(4).
- (4) A direction under subsection (3)—
 - (a) may require persons to enter into a specified arrangement (whether or not that arrangement has been the subject of a proposal under section 33H)
 - (b) may specify the terms upon which arrangements are to be entered into (whether generally or in respect of a specified arrangement);
 - (c) in the case of a direction to enter into a specified arrangement with a person who is not mentioned in subsection (1), must not be given unless that person consents to the direction.”

27 Power to amend learning domains and suspend local curriculum (j042)

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

“33J Power to amend learning domains and suspend local curriculum

- (1) The Welsh Ministers may by order—
 - (a) amend any provision of subsection (3) of section 33A;
 - (b) provide that, while the order remains in force, that section is not to have effect.

(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).”

28 The local curriculum: interpretation [j029]

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

“33K The local curriculum: interpretation

In sections 33A to 33K—

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

“institution” means an institution within the further education sector in Wales;

“learning domain” is to be construed in accordance with section 33A;

“local curriculum” is to be construed in accordance with section 33A;

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

“maintained school” 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,

provided that it is also a secondary school;

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

“relevant school or institution”, in relation to a person, is to be construed in accordance with section 33B(4);

“school”, in relation to a pupil, means the maintained school of which he or she is a registered pupil when he or she makes an election under section 33B;

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

29 Regulations and orders: procedure (j043)

After section 152(4) of the Learning and Skills Act 2002 (c. 32) insert—

- “(4A) Any statutory instrument containing regulations made under section 33A(4), 33B(3), 33D(2) or (3), 33F(2) or 33H(6) by the Welsh Ministers 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 33J 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

30 Provision of services by maintained schools and further education institutions **[j033]**

- (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) [In this section “young persons” means persons who have attained the age of eleven but not the age of twenty six.]

31 Duties of governing bodies [j034]

- (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 30(1).
- (2) Action which a governing body takes in pursuance of subsection (1) may relate to a particular class of young persons.

32 Amendments to the Learning and Skills Act 2000 [j035]

- (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 30(1)(a) or (b) of the Learning and Skills (Wales) Measure 2008”.
- (3) In subsection (1)(a) of section 127 of that Act, after “section 123(1)” insert “or section 30(1) of the Learning and Skills (Wales) Measure 2008”.

Learning Pathways

33 The learning pathway document [j045]

- (1) This section makes provision for each relevant pupil or 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 or student’s “learning pathway” means—
 - (a) the courses of study (if any) that the pupil or student is entitled to follow under section 116C(1) of the Education Act 2002 or section 33C(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 31 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 either of the events described in subsection (3)(a) occurs; and
 - (b) in the case of a relevant student, the principal of the student’s institution when either of the events 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 one of the events described in subsection (3)(b) occurs; and
 - (b) in the case of a relevant student, the principal of the pupil’s institution when one of the events 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 by the Welsh Ministers as to the exercise of their functions under this section.

34 Learning pathways: interpretation [j046]

In this section and section 33—

“institution” 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;

“maintained school” 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” means the principal or other head of an institution;

“relevant pupil” means a registered pupil of a maintained school; and

“relevant student” 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.

Amendment of Education Act 1997

35 Amendment of Education Act 1997 [j006]

- (1) The Education Act 1997 (c.44) is amended in accordance with this section.
- (2) After section 45 insert—

“45A Provision of curriculum information

- (1) Subject to subsection (2), a service provider may request a person mentioned in subsection (5) to provide it with such curriculum information as the provider may require in connection with its provision of services.
- (2) A service provider must not request under subsection (1) the provision of curriculum information which identifies, or allows to be identified, any pupil or student.
- (3) A person to whom a duly made request is given under subsection (1) must comply with it.
- (4) A service provider may publish in whatever form it sees fit any curriculum information provided under subsection (1).
- (5) The persons referred to in subsections (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 in the further education sector in Wales.
- (6) In this section—

“curriculum information” means—

 - (a) in relation to a school mentioned in subsection (5)(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 in 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 (5)(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 or directions given under section 10 of the Employment and Training Act 1973 (c. 50), and “services” shall be construed accordingly; and

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

PART 4 – MISCELLANEOUS AND SUPPLEMENTAL

36 Regulations in connection with the operation of the local curriculum [j032]

- (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 registered pupil of a school or a registered parent of such a pupil;
 - (iii) at a school
 - (iv) attending, attending at or in attendance at a school;
 - (v) receiving education at a school; or
 - (vi) studying, or intending to study at, a 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) 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.
- (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 and the Learning and Skills Act 2000 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..
- (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.

37 Orders and regulations [j048]

- (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.

38 Commencement [j049]

This Measure is to come into force on such day as the Welsh Ministers may by order appoint. Different days may be appointed for different purposes, and for different local education authority areas in Wales.

39 Short title and inclusion of Measure within the Education Acts [j050]

- (1) This Measure may be cited as the Learning and Skills (Wales) Measure 2008.
- (2) This Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

SECTION 3

PROPOSED LEARNING AND SKILLS (WALES) MEASURE 2008

Explanatory Memorandum to the Learning and Skills (Wales) Measure 2008

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills (DCELLS) of the Welsh Assembly Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Learning and Skills (Wales) Measure 2008, published for consultation by me on the 15 January 2008 would be within the legislative competence of the National Assembly for Wales.

John Griffiths AM

Deputy Minister for Skills

15 January 2008

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ANNEX 1 – Explanatory Notes

1. Description

1.1 This Measure will make 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.

1.2 The statutory provisions are sought in order to provide the means by which a legal framework can be put in place that will reflect Learning Pathways 14-19 policy and provide the means to develop that legal framework as policy develops.

1.3 The key purpose of this 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, known already in 14-19 Learner Networks as an 'Options Menu'. The local area curriculum will contain specific learning domains, containing a wide range of options of study including academic, vocational and learning experiences/opportunities. It will be possible for 14-19 year olds to study outside their main learning setting.

1.4 The Measure will enable regulations to be made by Welsh Ministers that may specify the minimum number of courses of study to be selected for inclusion within the local curriculum as a whole and within a particular learning domain. Regulations also may state the minimum number of vocational courses of study to be included in a local curriculum. By regulation the Welsh Ministers may also specify a maximum number of courses of study a pupil has the right to elect to follow.

1.5 The Measure will, in addition, place the Welsh Ministers under a duty to specify in regulations the grounds on which a Head Teacher or Principal may decide that a learner is not entitled to follow a course they had elected to study and enable regulations to be made as to the making of these decisions.

1.6 The Measure will place a duty on Local Education Authorities in Wales in relation to learners aged 14-16, and on the Welsh Ministers for those learners aged 14-19, to form a collaborative local area curriculum, through joint working between Governing Bodies of Schools and Further Education Institutions, Local Education Authorities, Head Teachers and Principals. The Measure will enable Welsh Ministers to issue guidance and directions in relation to joint working and co-operation.

1.7 A duty will be placed on Governing Bodies and Head Teachers of Maintained Schools and Governing Bodies and Principals of Further Education Institutions to assist a Local Education authority or the Welsh Ministers, as

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

appropriate, in planning the local area curriculum, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers. Local Authorities will also be under the same duty to assist the Welsh Ministers.

1.8 In relation to youth support services, the Measure makes provision for Local Authorities and Governing Bodies of Maintained Schools and Further Education Institutions so that they may incur expenditure, employ staff, and enter into agreements for the supply of goods and services.

2. Legislative background

2.1 The Education and Inspections Act 2006 provided the National Assembly for Wales with a framework power for Wales under Section (178(1) (d),(g) and (h). The power was converted by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 to enable the Assembly to legislate by Measure in relation to the areas relevant to the 14-19 Learning Pathways policy.

2.2 The enabling powers are in the Government of Wales Act 2006, Schedule 5, Field 5: Education and Training, Matters 5.4, 5.7 and 5.8. This gives the National Assembly for Wales legislative competence to pass this Assembly Measure.

Matter 5.4

Provision about the curriculum in schools maintained by local education authorities.

Matter 5.7

Provision about entitlement to primary, secondary and further education and to training.

Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people—

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

3. Purpose and Intended Effect of the Legislation

3.1 This Measure builds on the policy intentions set out by the Welsh Assembly Government in relation to 14-19 Learning Pathways in the *Learning Country: Learning Pathways 14-19 2002*, and *The Learning Country: Vision into Action 2006* that:

'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'

3.2 The Learning and Skills (Wales) Measure 2008 will contribute directly to the achievement of the aims stated in the above documents by creating a statutory basis for 14-19 Learning Pathways. The Learning Pathways policy has the potential to transform provision and support 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. Encompassing the basic principles of this policy in a legal framework will ensure that these policies will be implemented in a consistent way to the benefit of 14-19 year old learners across Wales. The Learning Pathways policy utilises a blend of 6 key elements;

- Individual Learning Pathways to meet the needs of each learner;
- Wider choice and flexibility of programmes and ways of learning from a collaborative options menu;
- A Learning Core which runs from 14 through to 19 wherever young people are learning and which includes skills, knowledge, understanding, attitudes and values and common experiences;
- Learning coach support;
- Access to personal support;
- Impartial careers advice and guidance.

3.3 The combination of these elements will ensure that all learners will receive an appropriate balance of learning experiences that best meet their individual needs. The key statutory elements of this policy are the creation of a local curriculum that contains a wide range of courses and opportunities and a right for learners to choose courses of study from that curriculum. Courses can be delivered outside of the learners' usual learning setting. It also provides more powers for local authorities to provide learners with the support and guidance that is necessary for them to achieve their full potential.

3.4 Existing legislation does not ensure that all learners have an entitlement to access the 6 elements established within Learning Pathways. The key issues addressed, therefore, by the Measure are outlined below.

3.5 Curriculum Provision 14-19

3.5.1 *To secure entitlement for learners to a range of options from a collaborative option menu including options outside their main learning setting.*

An entitlement to access a wide range of options across Wales can only be secured via an Assembly Measure. In the absence of a Measure, access to the envisaged options menus could be limited and inadequate in scope. It could not be guaranteed that an individual learner's need would be satisfactorily met across Wales as there would remain an option for providers in some areas to opt-out of the 14-19 Pathways policy to the detriment of learners.

3.5.2 *To place a duty to consider co-operation on Head Teachers, School Governing Bodies, LEAs and Further Education institutions in securing a collaborative option menu.*

At present no such obligation exists. Efficient and effective provision of a wide range of choices for learners in the form of the envisaged option menus can only be achieved within present structures via collaboration between learning providers. The degree of autonomy in existence for learner providers is such that it is possible to resist moves towards greater co-operation. It is therefore necessary for there to be a duty to consider co-operation underpinning the establishment of wider learner choice.

3.5.3 *To secure access to a wide range of experiences from the Learning Core.*

The Learning Core will apply to young people in Wales from the age of 14 to 19. It is made up of minimum requirements plus enhancements.

As a minimum, it consists of the skills, knowledge, understanding, attitudes, values and experiences that all learners need to prepare them for further learning, employment, personal fulfillment and their contribution to our bilingual and diverse society, regardless of the Learning Pathway that a learner chooses to follow.

Learners should also have access to enhancements to the minimum requirements to develop their core learning for their chosen pathway and/or to fulfill an interest that will enrich their lives.

Learners will also be entitled to a wide range of experiences and activities which will enable them to develop Key Skills.

3.5.4 Provision to include a definition of the age range to be covered.

This would allow Further Education institutions and work based learning providers to engage in co-operative provision for learners from 14-16 as well as allowing for learners who may not have completed their studies by the age of 19. The measure also makes provision for Further Education Institutions to participate in provision for learners from 14 onwards.

3.6 Learner Support

3.6.1 The 6 Elements are inter-related and the goal of ensuring “that all learners will receive an appropriate balance of learning experiences that best meet their individual needs” can only be met if learners receive the required level of support in their development.

3.6.2 Learning coach support for learners is essential, whether it is provided by a specific individual, or a function carried out by a team, to provide significant support to learners to:

1. Help them develop learning skills
2. Make best use of and develop their learning styles
3. Maximise their development in a variety of areas of intelligence, including emotional intelligence.

3.7 The objectives of the Measure are:

- to place a duty on Local Education Authorities in Wales to form a local curriculum for learners aged 14-16, and on the Welsh Ministers for learners aged 16-19 that contains specified learning domains;
- to enable Welsh Ministers to specify the minimum number of courses of study to be selected for inclusion within a local curriculum, specify the particular learning domain into which a course of study falls and specify the minimum number of vocational courses of study to be included in a local curriculum;
- to create a right for pupils of Maintained Schools to elect to follow courses of study from the local area curriculum. It will also enable regulations to specify the maximum amount of courses of study a pupil has the right to choose from and to elect to follow;
- to specify the grounds by which a Head Teacher/Principal may decide that a pupil is not entitled to follow a course they had elected to do and enable regulations to be made in relation to the making of those decisions;
- to place a duty on Governing Bodies and Head Teachers of Maintained Schools and Governing Bodies of the Further Education sector to assist a Local Education Authority in planning the area

local curriculum, having regard to any guidance issued and in compliance with any directions given by Welsh Ministers;

- to maximise co-operation between Governing Bodies of Maintained Schools and Further Education Institutions, and Local Education Authorities to deliver a wide range of options of study in their local area curricula;
- to enable Welsh Ministers to issue guidance and directions in relation to joint working, co-operation and collaboration;
- to give Welsh Ministers the power to amend learning domains.

3.8 Explanation of the Provisions

The provisions in the Measure are explained in the Explanatory Notes at Annex 1.

3.9 Application

The Measure will apply to all of Wales.

4. Consultation

4.1 Consultation on the 14-19 phase effectively began with “The Learning Country: A Paving Document” in September 2001. The consultation document “The Learning Country: Learning Pathways 14-19” issued by the Welsh Assembly Government in November 2002 provided significant scope for consultation, debate and discussion on this policy. The consultation process has been supported by a series of regional conferences; by the construction of representative working groups and field activity by Assembly staff. The first 14-19 Learning Pathways Guidance was published in July 2004, and updated in April 2006. Further guidance has been issued on specific aspects of Learning Pathways such as Learning Coach support.

4.2 However, whilst there has been consultation on the development of Learning Pathways there has not been any formal consultation with providers on effectively legislating on its enforcement. It is essential that consultation on this issue is undertaken in order that the favourable climate for change that has been engendered is maintained.

5 Power to make subordinate legislation

5.1 The Welsh Ministers are under a duty to make regulations specifying the grounds on which a head teacher or principal may decide a pupil is not entitled to follow a course.

5.2 The draft Measure contains enabling powers for Welsh Ministers to make provision in regulations about:

- The formation of the local curriculum, for example, the minimum number of courses to be offered within the local curriculum and the minimum number of those courses that must be vocational;
- the making of choices of local curriculum courses including, for example, the maximum number of courses a pupil has a right to follow and the period during which choices can be made;
- the relevant time scales for head teacher's or principal 's decisions that a pupil cannot follow a course and more generally in relation to the making of such decisions;
- extending the definition of 'co-operation arrangements' to include formal collaboration between maintained schools and between schools and further education bodies;
- amending learning domains;
- applying the provisions of the Measure to children of compulsory school age who are not registered as pupils of a maintained school but are receiving education within the further education sector in Wales.

5.3 In addition the Measure enables the Welsh Ministers by order to amend the learning domains or suspend the local curriculum.

5.4 Apart from the power to suspend the local curriculum or amend the learning domains by order which is subject to affirmative procedure in the Assembly, subordinate legislation made under the provisions in the Measure is subject to the negative procedure.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment for this measure is at part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

7.1 The development of 14-19 Learning Pathways is seen as a key element within the education strategy for Wales. In this regard 3 options are examined. The aim of 14-19 Learning Pathways is to transform provision and support 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.

In support of this a blend of the 6 key elements is essential. In order to fulfil the aims of the policy it is necessary to:

- place a duty to consider co-operation on Schools and Further Education Institutions to secure a collaborative option menu offering a wide range of choice and opportunities to learners in all parts of Wales;
- secure entitlement for learners to a range of options from the collaborative option menu including options outside their main learning setting;
- secure access to a wide range of experiences from the Learning Core;
- secure for learners throughout Wales entitlement to support not already covered in previous legislation including Learning Coach support and access to personal support.

It is with regard to its ability to facilitate the establishment and development of each in pursuit of the aim of Learning Pathways that each option examined needs to be judged.

7.2 The options are:

Option 1: Do nothing

Option 2: Continue to evolve the approach to Learning Pathways with the issuing of revised guidance as is undertaken at present.

Option 3: Introduce an Assembly Measure

Option 1 – Do Nothing

7.3 Learning Pathways Guidance has been provided, a 14-19 Action Plan has been produced and is being implemented, 14-19 Annual Network Development Plans have been produced, funding allocations to initiate developments have been provided.

7.4 Doing nothing would mean that:

- Progress would be made in relation to 14-19 and the 6 elements but would be mainly dependent on goodwill. There would be only limited incentives to progress further.
- The situation would remain whereby there was no legal obligation on Schools, Governing Bodies or Further Education Institutions to consider co-operation in their provision for 14-19 year olds.
- Developments would not take place evenly and current variations in provision would become further embedded.
- Developments would not keep pace with change in educational theory and practice.
- Learner options 14-19 would remain restricted.
- The goal of *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'* would be unlikely to be met.
- There would be little scope for the realisation of economies of scale that might result from shared provision.

Option 2 – Continue to evolve the approach to Learning Pathways with the issuing of revised guidance as is undertaken at present.

7.5 Option 2 would mean that:

- The situation would remain whereby there was no legal obligation on Schools, Governing Bodies or Further Education Institutions to consider co-operation in their provision for 14-19 year olds. In “The Learning Country: Vision into Action” it was noted that despite progress “Collaboration in 14-19 education and training between Schools, Further Education Colleges and work based learning providers is weak.”
- It would remain extremely difficult to ensure equality of opportunity for 14-19 year olds across Wales. Unacceptable variations in access to curriculum provision and learner support would be likely to remain and possibly widen.
- There would be limited scope for securing potential economies of scale from shared provision.
- The goal of *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'* would be difficult to meet.

Option 3 – Introduce an Assembly Measure

7.6 An Assembly Measure is the only option that can address the policy objectives. The Measure provides flexibility for necessary changes to the detail of the policy in the future.

7.7 Option 3 would therefore:

- Ensure that Schools and Further Education Institutions co-operated with the LEAs and Welsh Ministers in the construction of option menus.
- Secure access to wider curriculum choice for 14-19 year old learners across Wales including a learning core.
- Establish a Welsh legislative framework which can be developed to meet changing educational needs 14-19.
- Be most likely to facilitate the aim that *'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'*

8. Costs & Benefits

8.1 The 14-19 Learning Pathways policy is a well established cornerstone of the Welsh Assembly Government's vision for education and training in Wales. There is a need to ensure that 14-19 learners across Wales benefit from the increased opportunities that it offers.

8.2 In putting the key components of the policy on a statutory basis there will be a number of benefits. Local authorities with the engagement of 14-19 Networks can, via the promotion of co-operation, work efficiently and effectively in the provision of the required option menus and associated learner support. This will assist in ensuring that economies of scale are engendered and that resource allocation is optimised for the benefit of all learners.

8.3 It is the intention that all Local Authorities, Governing Bodies and Head Teachers of Maintained Schools will co-operate within the 14-19 Network area to provide the entitlements to courses of study. Local Authorities, the Governing Body of Maintained Schools and of Further Education Institutions will be under a duty to consider the need to co-operate with each other. The Welsh Ministers will be able to direct these persons to enter into co-operation arrangements should they fail to co-operate to maximise the availability of courses in the local options menu.

8.4 By advocating a co-operative approach to the provision of the options menus, Schools and FEIs will have greater capacity to deliver the individual learning pathways than any of them could by acting alone. Co-operation is, therefore, an opportunity for Schools and FEIs to expand the number and type of courses of study they are able to offer.

8.5 Paragraph 7 outlines three options. The costs and benefits associated with each option are examined here. A number of non monetary costs have been identified in paragraph 7 and are included in this analysis for completeness.

8.6 Option1: “Do nothing”.

Cost	Benefit
No direct or indirect financial cost.	Resources available for use elsewhere.
Previous expenditure and time spent in development “written off.”	None of the pressures associated with the management of change would fall on schools.
Developments would not take place evenly and current variations in provision would become further embedded.	
Developments would not keep pace with change in educational theory and practice.	
Learner options 14-19 would remain restricted.	
<i>The goal of '95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015' would be unlikely to be met.</i>	

8.7 The financial benefit would be the saving of £32.5 million allocated to 14-19 Learning Pathways. As to which groups would benefit from this “gain” is entirely dependent upon the political decision with regard to how such expenditure should be reallocated or withdrawn. The costs of the “do nothing” option initially would fall completely upon learners but ultimately the potential costs from lower social engagement, lower achievement, lower attainment would be borne by the economy and society as a whole. This assumes that if fully implemented the 14-19 Learning Pathways would have a positive impact upon these variables.

8.8 Option 2: Continue to evolve the approach to Learning Pathways with the issuing of revised guidance as is undertaken at present.

Cost	Benefit
Maintenance of current annual expenditure of £32.5 million.	
It would remain extremely difficult to ensure equality of opportunity for 14-19 year olds across Wales.	
Unacceptable variations in access to curriculum provision and learner	Some growth in learner choice and improvements in learner support

support would be likely to remain and possibly widen.	would be secured.
There would be limited scope for securing potential economies of scale from shared provision.	
The goal of <i>'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'</i> would be difficult to meet.	Some progress toward the target would be made.

8.9 The expenditure of £32.5 million would not be available for other policy implementation. Costs of non compliance with the policy would mean that learners in some geographical areas would be disadvantaged. Since a major thrust of the policy is to benefit those learners and potential learners who are currently most disadvantaged, non compliance with the policy would harm these groups most. The immediate benefits would be received by learners, longer term there would be benefits to the economy and society as a whole.

8.10 Option 3 – Introduce an Assembly Measure

Cost	Benefit
Maintenance of current annual expenditure of £32.5 million.	Secure access to wider curriculum choice for all 14-19 year old learners across Wales including a learning core.
Compliance checks would be required.	Provision of a Welsh legislative framework which can be developed to meet changing educational needs 14-19
	Provision of an entitlement to support beyond that which already exists under legislation.
	Higher levels of participation, achievement and attainment
	Be most likely to facilitate the aim that <i>'95 per cent of young people by the age of 25 to be ready for high skilled employment or higher education by 2015'</i>

8.11 Compliance checks would be required but could be included within the current activities of Estyn. Other compliance checks are likely to be modest in cost and could therefore fall within the annual £32.5 million allocation and self assessment and evaluation processes developed within Learning Network activity. Immediate benefits fall upon young people within the 14-19 age range. Longer term benefits will accrue to the economy and society as a whole.

9. Competition Assessment

The competition filter test has been undertaken in respect of these proposals and the filter tests have shown a low risk of detrimental effect on competition and no anticipated significant benefits for competition.

10. Post implementation review

10.1 Compliance checks as to the provision of education under the Measure would be required but could be included within the current activities of Estyn. Other compliance checks are likely to be modest in cost and could therefore fall within the annual £32.5 million allocation. Self assessment and evaluation processes are currently being developed within Learning Network activity.

Feedback will be obtained also from Welsh Assembly Government casework and preparatory work undertaken to make regulations.

Annex 1

Explanatory Notes

Draft Explanatory Notes for Learning and Skills (Wales) Measure 2008

These Explanatory Notes relate to the Learning and Skills (Wales) Measure 2008. They have been prepared by the Welsh Assembly Government's Department of Education, Culture and the Welsh Language to assist consultees in understanding the draft Measure. They do not form part of the Measure and have not been endorsed by the National Assembly for Wales.

The Notes need to be read in conjunction with the draft Measure. They are not, and are not meant to be, a comprehensive description of the draft Measure. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

PART 1 LOCAL CURRICULUM FOR PUPILS IN KEY STAGE 4

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

This section provides additional definitions to those already set out in section 97 of the Education Act 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:

- “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 a LEA's local curriculum, it must lead to an external qualification and have been approved by the Welsh Ministers under the 2000 Act;
- “learning domain” and “local curriculum” which are to be construed in accordance with section 116A (inserted into Part 7 of the EA 2002 by section 4 of this Measure)
- “school”. The definition provides that “school” means, in relation to a pupil, the school at which he or she is a registered pupil.

Section 2 Duty to implement general requirements

This section amends section 100 of the EA 2002. Section 100 operates by reference to section 99 which itself sets out a list of general requirements of 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 local curriculum functions.

Section 3 Basic Curriculum for every maintained school in Wales

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 4-12 insert new provisions into the Education Act 2002

Section 4 Formation of the local curriculum for pupils in Key Stage 4 (section 116A of the Education Act 2002)

This section provides for the formation in each local education authority area of a local curriculum for 14-16 year olds (pupils in Key Stage 4).

Subsection (1) places a duty on each local education authority to form a 14-16 local curriculum for its area.

Subsection (2) states that the local curriculum must consist of suitable courses of study falling within the learning domains defined 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.

Subsection (3) defines the learning domains which constitute the categories or framework of the local curriculum.

Subsection (4) provides discretion for local authorities to form the local curriculum to meet local needs, subject to regulations which may be made under subsection (5)

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.

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.

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 the local curriculum than others.

Section 5 Pupils’ choices of local curriculum courses (section 116B of the Education Act 2002)

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.

Subsection (1) sets out the rights of pupils in Key Stage 4 to elect to follow a course or courses from the applicable local curriculum. These rights, however, may be limited by regulations made by the Welsh Ministers under subsection (2).

Subsection (2) enables regulations to be made which will specify the maximum number of courses the pupil may choose from the whole local curriculum, the combination of courses of different types that may be chosen 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 may be delivered by a school or institution other than the one attended when choices are made).

Section 6 Pupils’ local curriculum entitlements (section 116C of the Education Act 2002)

This section provides that a choice made by a pupil under section 5 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.

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.

Subsection (2) should be read in conjunction with section 116D under which the head teacher of a pupil’s registered school may decide that he or she is not entitled to follow a chosen course of study.

Subsection (3) 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 7 Head teacher's decision as to entitlement (section 116D of the Education Act 2002)

It would probably be impossible to establish a system under which all pupils' elections to follow courses of study were converted into entitlements. For example, if only a handful of pupils in a local education authority area chose to follow a particular course it may not be an efficient use of resources to deliver that course. This is why this section permits head teachers to decide that a pupil is not entitled to follow a particular course or courses of study.

The Welsh Ministers must, under subsection (2), set out the grounds on which a head teacher may decide that a pupil is not entitled to follow a course of study. Regulations under subsection (3) may make further provision about the making of decisions under this section. For example, they may provide that decisions must be taken by a particular date in order that pupils know in good time which courses of study they shall be following during Key Stage 4.

The Welsh Ministers have the power to issue guidance to head teachers about the exercise of their functions under this section. This could deal with matters such as liaison with other heads (with a view to them agreeing which courses of study to make available to pupils from each other's schools) before making a decision as to entitlement..

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

This section spells out the nature of an entitlement to follow a course of study. The course of study must be made available to a 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 9 Head teacher's decision to remove entitlement (section 116F of the Education Act 2002)

Sometimes, it will be necessary to remove a pupil's entitlement to follow a course of study, e.g. for misconduct. The grounds on which a Head teacher may decide that a pupil will no longer be entitled to follow a course of study must be specified in regulations made by Welsh Ministers. A Head teacher must have regard to any guidance issued by Welsh Ministers about his or her exercise of functions under this section.

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

A local authority's decision as to which courses of study to include within its local curriculum 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 curriculum.

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.

Subsection (2) defines "planning the local curriculum" as the process by which a local education authority decides which courses of study to include in the local curriculum. Subsection (3) provides for the Welsh Ministers to issue guidance and direction as to the exercise of a person's functions under this section.

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 11 Delivery of local curriculum entitlements: joint working (section 116H of the Education Act 2002)

As stated in subsection (1), the objective of this section is to maximise the availability of courses of study included in the local curriculum. In order to secure a wide range of choice, learning settings may need to work together.

Under subsection (2), the governing body of a maintained school is under an ongoing duty to consider whether the objective of this section (maximising the availability of courses of study) would be furthered by entering into a co-operation arrangement. If the governing body concludes that that objective would be furthered by the entering into of a co-operation arrangement, it must seek to do so. "Co-operation arrangement" is defined by subsection (5) to mean an arrangement whereby some body, such as a maintained school, provides a course of study on behalf of other maintained schools.

Subsection (3) concerns the role of a local education authority in maximising the availability of local curriculum courses. The authority is under an ongoing duty to consider whether it would further the objective of this section to enter into an arrangement whereby it arranges for someone else to provide local curriculum courses of study on behalf of maintained schools. If the authority concludes that that objective would be further by the entering into of such an arrangement, it

must seek to do so. Subsection (3) might, for example, encompass an arrangement made by an LEA with a private training organisation for it to provide a course of study for pupils from a number of maintained secondary schools within the authority's area.

Where a school governing body (under subsection (2)) or a LEA (under subsection (3)) makes a proposal to a Further Education Institution, subsection (4) requires the governing body of the institution to consider the proposal.

Subsection (6) allows for regulations of the Welsh Ministers to extend the definition further if required so as to include formal collaboration arrangements under the provisions mentioned in the subsection.

Section 12 Joint working: guidance and directions (section 116I of the Education Act 2002)

This section relates to the joint-working obligations imposed by section 116H. 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 116H.

Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 116H. 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 13 Power to amend learning domains and suspend local curriculum (section 116J of the Education Act 2002)

This provision allows Welsh Ministers to amend section 116A(3). This would, for example, allow new learning domains to be created. The provision also permits the Welsh Ministers to provide that section 116A is not to have effect whilst the order is in force.

Section 14 Application of local curriculum provisions to children who are not registered pupils (section 116K of the Education Act 2002)

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 15 Powers to alter or remove requirements for fourth key stage

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 16 Regulations and orders: Procedure

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 section 116J which, because it would alter primary legislation, is made subject to the affirmative resolution procedure.

PART 2 LOCAL CURRICULUM FOR STUDENTS AGED 16 TO 18

This Part of the Measure inserts provisions into Part 2 of the Learning and Skills Act 2000. Part 2 of that Act concerns sixth form and further education in Wales. In most respects, the inserted provisions reflect, with appropriate modifications to reflect the different structure of further education, the provision made in relation to the local curriculum for children aged 14 to 16 by Part 1 of this Measure.

Sections 17 – 29 amend the Learning and Skills Act 2000

Section 17 Education and training for persons aged 16 to 18

Section 31 of the Learning and Skills Act 2000 imposes general duties upon the Welsh Minister in relation to further education in Wales. This section of the Measure amends section 31 so that those general duties also apply in relation to the local curricula created under the following provisions.

Section 18 Formation of the local curriculum for students aged 16 to 18 (section 33A of the Learning and Skills Act 2000)

This section provides for the formation for each local education authority area of a local curriculum for students aged 16 to 18.

Subsection (1) provides that it is the Welsh Minister's duty to form local curricula under this section. Accordingly, a different approach is taken in relation to 16 to 18 year olds than is taken under Part 1 of the Measure in relation to 14 to 16 year olds. This is as a consequence of funding responsibilities. The Welsh Ministers are directly responsible for funding further education in Wales and it is therefore appropriate that they form the local curricula. The contents of local curricula will have to be constrained by available resources and it is therefore necessary that the body that controls resources also controls the contents of local curricula.

Subsection (2) states that the local curriculum must consist of courses of study falling within the learning domains described in subsection (3) and selected by the Welsh Ministers. The Welsh Ministers, if they see fit, will be able to make arrangements under section 83 of the Government of Wales Act 2006 for a relevant authority to exercise their functions under this section. For example, the Welsh Ministers could make arrangements with a local education authority so that it selected on behalf of the Welsh Ministers the courses of study to be included in the local curriculum for the authority's area.

Subsection (3) defines the learning domains which constitute the categories of the local curriculum. These are the same as those for pupils aged 14 to 16 at Key Stage 4 to provide the opportunity for continuity and progression throughout the 14-18 phase of education.

Subsection (4) provides for regulations to specify the learning domain into which a course of study will fall for the purposes of this section.

Section 19 Pupils' choices of local curriculum courses (section 33A of the Learning and Skills Act 2000)

This section begins the process which results in a student being entitled to follow courses of study from the applicable local curriculum. This section will operate in relation to children in Key Stage 4. It is during that stage that they will need to make choices about the courses they wish to follow when they cease to be of compulsory school age at the end of Key Stage 4.

Subsection (1) sets out the rights of pupils to elect to follow a course or courses from the applicable local curriculum (the local curriculum for the area of the education authority by which the pupil's school is maintained). These rights may, however, be limited by regulations made by the Welsh Ministers under subsection (2).

Subsection (2) sets out the period of time during which any student's entitlement exists. Any entitlement ceases once a person attains the age of nineteen. This does not mean that such a person must cease following a course of study upon attaining nineteen, merely that she no longer has an enforceable entitlement to continue to follow the course.

Subsection (3) enables regulations to be made by the Welsh Ministers which will specify the maximum number of courses the pupil may choose from the whole local curriculum, the combination of courses of different types that may be chosen 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 may be delivered by a school or institution other than the one attended when choices are made).

The 16 to 18 local curriculum provisions operate by reference to the concept of a pupil's "relevant school or institution". Under subsection (4), it is for the head teacher of the school attended by a pupil during Key Stage 4 to decide which is a pupil's relevant school or institution. It may be the school attended during Key Stage 4 (where it has a sixth form) or it may be a different institution for example a Further Education Institution. The identification of the relevant school or institution will depend on which school or institution the head teacher thinks the pupil is likely to attend once s/he ceases to be of compulsory school age. Before arriving at a conclusion, the head teacher will need to consult with the pupil in question as well as any school or institution which the pupil would like to attend. Once a determination has been made as to a pupil's relevant school or institution, that school or institution subsequently becomes responsible for delivering 16 to 18 local curriculum entitlements enjoyed by that pupil.

Section 20 Students' local curriculum entitlements (section 33C of the Learning and Skills Act 2000)

This section provides that a choice made by a student under section 33A is an 'in principle' entitlement to follow the chosen course of study at or under arrangements made by the student's relevant school or institution. It will become an actual entitlement unless an event provided for under this section occurs.

Subsection (1) specifies that a pupil's entitlement ceases if the student's relevant school or institution ceases to be responsible for the majority of his or her education, for example if the student ceases to be a registered pupil of a school before entering its sixth form.

Subsection (2) should be read in conjunction with section 33D under which the head teacher or principal of a student's relevant school or institution may decide that he or she is not entitled to follow a chosen course of study.

Subsection (3) specifies that, where an entitlement to follow a course of study arises, it is for the head teacher or principal of the student's relevant school or institution to decide when the course of study is to begin

Section 21 Head teacher's or principal's decisions as to entitlement (section 33D of the Learning and Skills Act 2000)

It would probably be impossible to establish a system under which all elections to follow courses of study were converted into entitlements. For example, if only a handful of pupils in a local education authority area chose to follow a particular course it may not be an efficient use of resources to deliver that course. This is why this section permits head teachers or principals to decide that a student is not entitled to follow a particular course or courses of study.

The Welsh Ministers must, under subsection (2), set out the grounds on which a head teacher or principal may decide that a pupil is not entitled to follow a course of study. Regulations under subsection (3) may make further provision about the

making of decisions under this section. For example, they may provide that decisions must be taken by a particular time in order that students know in good time which courses of study they shall be following after Key Stage 4.

The Welsh Ministers have the power to issue guidance to head teachers and principals about the exercise of their functions under this section. This could deal with matters such as liaison with other heads or principals (with a view to offering courses of study to students from each other's schools or institutions) before making a decision as to entitlement.

Section 22 Delivery of local curriculum entitlements (section 33E of the Learning and Skills Act 2002)

This section spells out the nature of an entitlement to follow a course of study. The course of study must be made available to a student by, or on behalf of the governing body of his or her relevant school or institution. This means courses of study in the local curriculum may be offered at a different learning setting to a pupil's relevant school or institution, for example a student who attends a school with a sixth form may follow certain courses of study provided at a local Further Education Institution.

Section 23 Head teacher's or principal's decision to remove entitlement (section 33F of the Learning and Skills Act 2000)

Sometimes, it will be necessary to remove a student's entitlement to follow a course of study, e.g. for misconduct. The grounds on which a head teacher or principal of a student's relevant school or institution may decide that a pupil will no longer be entitled to follow a course of study must be specified in regulations made by Welsh Ministers. A head teacher and principal must have regard to any guidance issued by Welsh Ministers about his or her exercise of functions under this section.

Section 24 Planning the local curriculum (section 33G of the Learning and Skills Act 2000)

The Welsh Ministers' decision as to which courses of study to include within a local curriculum under section 33A 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 16 to 18 education to assist the Welsh Ministers in planning the local curriculum for a particular local education authority area.

Subsection (1) specifies that the following people must assist the Welsh Ministers in this regard:

- (a) the local education authority for whose area the particular local curriculum is to be formed;

- (b) the governing body and head teacher of any secondary school maintained by that authority;
- (c) the governing body and principal of an institution within the further education sector situated in that authority's area.

Subsection (2) defines "planning the local curriculum" as the process by which the Welsh Ministers decide which courses of study to include in a local curriculum. Subsection (3) provides for the Welsh Ministers to issue guidance and directions to the bodies mentioned above in connection with their duty to assist the Welsh Ministers under this section.

Section 25 Delivery of local curriculum entitlements: joint-working (section 33H of the Learning and Skills Act 2000)

As stated in subsection (1), the objective of this section is to maximise the availability of courses of study included in a local curriculum. In order to secure a wide range of choice, learning settings may need to work together.

Under subsection (2), the governing body of a maintained secondary school is under an ongoing duty to consider whether the objective of this section (maximising the availability of courses of study) would be furthered by entering into a co-operation arrangement. If the governing body concludes that that objective would be furthered by the entering into of a co-operation arrangement, it must seek to do so. A similar obligation is imposed upon Further Education Institution governing bodies by subsection (3). "Co-operation arrangement" is defined by subsection (5) to mean an arrangement whereby some body (e.g. maintained school) provides a course of study on behalf of a maintained school or Further Education Institution.

Subsection (4) concerns the role of a local education authority in maximising the availability of local curriculum courses. The authority is under an ongoing duty to consider whether it would further the objective of this section to enter into an arrangement whereby it arranges for someone else to provide local curriculum courses of study on behalf of maintained schools or Further Education Institutions. If the authority concludes that that objective would be furthered by the entering into of such an arrangement, it must seek to do so. Subsection (4) might, for example, encompass an arrangement made by an LEA with a private training organisation for it to provide a course of study for pupils from a number of maintained secondary schools within the authority's area.

Subsection (6) allows for regulations of the Welsh Ministers to extend the definition further if required so as to include formal collaboration arrangements under the provisions mentioned in the subsection.

Section 26 Joint working: guidance and directions (section 33I of the Learning and Skills Act 2000)

This section relates to the joint-working obligations imposed by section 33H. 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 33H.

Subsection (4) makes it clear that directions given under this section may require a specific co-operation arrangement to be entered into under section 33H. 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 27 Power to amend learning domains and suspend local curriculum (section 33J of the Learning and Skills Act 2000)

This provision allows Welsh Ministers to amend section 33A(3). This would, for example, allow new learning domains to be created. The provision also permits the Welsh Ministers to provide that section 33A is not to have effect whilst the order is in force.

Section 28 The local curriculum: interpretation (section 33K of the Learning and Skills Act 2000)

This section provides the meaning of various terms used in the provisions inserted in the Learning and Skills Act 2000 by this Measure.

Section 29 Regulation and orders: procedures

This section amends section 152 of the Learning and Skills Act 2000 so as to provide for Assembly control of regulations and orders made under the provisions inserted by this Measure into Part 2 of that Act. The relevant procedure is the negative resolution procedure in all cases except where an order is made under section 116J which, because it alters primary legislation, is made subject to the affirmative resolution procedure.

PART 3 – SERVICES RELATED TO EDUCATION AND TRAINING

Section 30 Provision of services by maintained schools and further education institutions

Subsection (1) permits the Welsh Ministers to direct the governing bodies of maintained schools and Further Education Institutions to provide or secure “learner support services”. They may also be directed to participate where learner support services are provided by someone else.

Subsection (3) gives a broad meaning to the term “learner support services”. Accordingly, a potentially wide range of services may be required to be provided under this section.

Subsection (4) sets out ancillary matters that may be included in a learner support services direction under subsection (1). For example, the directed body may be required to have regard to guidance given by the Welsh Ministers as to the provision of a particular learning support service.

Section 31 Duties of governing bodies

Governing bodies of maintained schools and further education institutions are required to comply with a direction given under section 30.

Section 32 Amendments to the Learning and Skills Act 2000

This section amends the Learning and Skills Act 2000.

The amendments made by this section to section 126 of that Act ensure that the requirements as to the transfer of information, and related matters, imposed upon educational institutions by that section in relation to youth support services also apply in the case of learner support services. For example, if a Further Education Institution were providing learner support services to a registered pupil, the pupil’s school could be required to provide (with parental consent) relevant information about the pupil, such as his educational history.

The amendments made to section 127 of the Learning and Skills Act 2000 ensure that Her Majesty’s Chief Inspector of Education and Training in Wales (Estyn) has the power to arrange for inspections of the provision of learner support services.

Section 33 The learning pathway document

This section makes provision for each relevant pupil or relevant student to be provided with a document which records his or her learning pathway. A pupil or student’s learning pathway is comprised of the local curriculum courses of study that he or she is entitled to follow under the provisions inserted by Parts 1 or 2 of this Measure together with the learner support services that he is provided with under section 30 of this Measure. The record is known as a “learning pathway document”. Under this section, it is for head teachers and principals of Further Education Institutions to produce, and keep up to date, learning pathway documents.

Section 34 Learning pathways: interpretation

This section defines terms used in section 33.

Section 35 Amendment of Education Act 1997

This section inserts a new section 45A into the Education Act 1997. It permits careers services providers to require schools and Further Education Institutions to provide them with curriculum information.

PART 4 – MISCELLANEOUS AND SUPPLEMENTAL

Section 36 Regulations in connection with the operation of the local curriculum

Currently, education legislation tends to be drafted on the assumption that a child will receive the majority of his or her education at a single site. Under the local curricula formed under Parts 1 and 2 of this Measure, this will often not be the case. For example, a child could receive a significant amount of his or her education at a school other than that at which he or she is registered.

The purpose of this section is to allow regulations to be made so that the existing body of education legislation will apply in an appropriate fashion in respect of children who receive education at more than one educational institution. For example, regulations under this section could specify that, for the purposes of legislation governing meetings with a child's parents, the child is to be treated as a registered pupil at more than one school in order that the parents had the right to meet with those responsible for the child's education at both schools.

Section 37 Orders and regulations

This section provides that any power of the Welsh Ministers to make regulations or an order under the Measure is exercisable by statutory instrument. It also provides that any regulations made under the Measure may be annulled by a resolution of the National Assembly for Wales.

Section 38 Commencement

This provides for the Measure to be brought into force by order of the Welsh Ministers. It permits the Measure to be brought into force at different times in different local education authority areas.

Section 39 Short title and inclusion of Measure within the Education Acts

This confers the title of the Measure – the Learning and Skills (Wales) Measure 2008. It also provides that the Measure shall be treated as if it were one of the "Education Acts". The result is that terms generally defined for the purposes of the Education Acts (for example, local education authority) bear that defined meaning when those terms are used in this Measure.

Section 4

4.0 Consultation Questions

Local Curriculum

1. Do you agree with the principle of increasing learner choice via co-operation between organisations and through the production of a local area curriculum?
2. For 14-16 learners registered at maintained schools the responsibility for planning the local curriculum rests with the local education authority and for governing bodies and head teachers to be required to assist the local authority in this regard. Do you agree that the responsibility should lie with local education authorities?
3. The responsibility for planning the local curriculum for learners aged 16-19 rests with Welsh Ministers. Do you consider this appropriate, and if not why?
4. Would the setting of a minimum number of courses to be contained within the local curriculum in Key Stage 4 and a minimum number of courses for learners 16-19 years old, assist in ensuring equality of opportunity for learners across Wales?
5. Is it appropriate that the decision as to an individual learner's entitlement should rest with the head teacher or principal?
6. Do you consider the use of minimum option numbers, allied with the use of learning domains succeed in supporting a workable framework for wider choice for learners in the 14-19 phase?
7. Is it desirable to set a minimum number of vocational courses that must be included within a local curriculum?
8. Should the minimum requirement for vocational courses be specified as having to fall across a range of learning domains?

Joint Working

9. Would the placing of a duty on local education authorities, governing bodies of schools and further education institutions, to consider co-operation be sufficient to achieve the provision of a local curriculum?
10. Please identify any barriers to co-operation that may need to be overcome. What possible solutions are there?

Learning Coach and Personal Support

11. The proposed measure makes provision for youth support services. Will the provision proposed facilitate young people's access to support services as envisaged within 14-19 Learning Pathways?