

**fforwm response to
*Proposed Learning and Skills Measure
(Wales) Measure 2008***

August 2008



fforwm response to the Proposed *Learning and Skills (Wales) Measure 2008*

1. fforwm welcomes the opportunity to respond to the Welsh Assembly Government's (WAG) proposed Learning and Skills Measure 2008.
2. fforwm is the national organisation representing the 23 further education (FE) colleges and two FE institutions in Wales¹. It is an educational charity and a company limited by guarantee. fforwm's Board comprises college principals and chairs of corporations, appointed by member colleges. fforwm provides a range of services to its members including networks, conferences, research, consultancy and the sharing of good practice. It also works closely with a wide range of partners in post-16 education and training. Through fforwm, colleges are represented on various committees, working parties and other groups influencing and shaping policy in post-16 education and life-long learning.

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3. fforwm submitted a detailed response to the proposals for a Learning and Skills (Wales) Measure in April 2008. This response gave a broad welcome to, and made a number of suggestions about improving, the Measure. We are pleased that a number of these points have been incorporated.

Key Questions

(i) Is there a need for legislation to reorganise 14-19 provision?

4. fforwm believes that there is a need to legislate to reorganise 14-19 provision. Many educational institutions are unable to offer a broad range of academic and vocational options to suit the needs of learners aged 14 and 16. As a result learners in some parts of Wales face a restricted curriculum that is not appropriate for a changing society and does not equip young people with the skills necessary in a global economy.
5. It is particularly the case that many young people at the age of 14 do not have the choice of taking vocational subjects as a core part of their learning experience. These subjects are often reserved for those perceived as being unlikely to achieve in an academic subject, a perverse way of raising the profile of vocational subjects so essential for developing the skills base of the workforce in Wales. There is huge scope for schools to draw on the expertise of FE colleges which have considerable experience in delivering high quality vocational courses.

¹ In this response, the terms further education institution (FEI) and FE colleges are used interchangeably to describe all of fforwm's members.

6. The proposed legislation needs to be seen in the context of other reforms taking place in post-14 education and training in Wales, particularly the emphasis on raising skills levels in Wales set out in Skills That Work for Wales², Reducing the Proportion of Young People Not in Education, Employment or Training (NEETs) in Wales³ and the Transformation document shortly to be published by DCELLS which will invite Learning Partnerships to bring forward proposals for transforming post-14 education in their areas.

(ii) Does the proposed Measure achieve the policy objective or could changes be made without legislating?

7. As noted in para 6 above of this response, some changes will take place without the need for legislation. The proposed Measure broadly achieves the policy objectives set out in para 3.7 of the Explanatory Memorandum.

8. Much will depend on the Welsh Ministers' decision as to the minimum number of courses of study to be selected for inclusion within a local curriculum. Too few courses of study will lead to little change; too high a number could destabilise the position in some areas. fforwm has argued for a minimum of 30 options at the age of 14 and 40 options at the age of 16, with rare exceptions where there is clear evidence of local factors such as rurality making it very difficult for this number of options to be made available, even with cooperation between providers.

9. The introduction of a minimum number of courses of study should ideally be phased in over a two year period starting 2009/10, with a maximum of four years.

(iii) What are the views of stakeholders who will have to work with the new arrangements?

10. From the age of 16 onwards, learners participate in learning voluntarily. There is no compulsion on them to learn or to stay in learning. Colleges therefore have invested heavily in making sure they offer a curriculum that is geared to the needs of learners; that learners are given support and guidance to make sure they choose the course that suits their needs; and that learners are encouraged to progress from one level to the next. Much emphasis is placed on ensuring that learners attending college achieve success by completing their studies and having high levels of attainment.

² *Skills That Work for Wales: A Skills and Employment Strategy and Action Plan*. WAG July 2008

³ *Delivering the Skills That Work for Wales: Reducing the Proportion of Young People Not in Education, Employment or Training in Wales*. WAG consultation document 050/2008 May 2008

11. The Measure contains a number of important interlocking proposals that, if enacted, will have a radical impact on the provision of learning opportunities for young people at the ages of 14 and 16. If young people from the age of 14 are given wider opportunities to take courses of study that suit their interests then more young people are likely to wish to remain in education until they reach the age of 18.
12. fforwm welcomes the key purpose of the Measure to create a right for learners aged 14-19 to elect to follow a course of study from a local area curriculum, known as an 'Options Menu'. A key element is that Welsh Ministers will be given the power to set a minimum number of academic and vocational courses which must be included in the local curriculum for 14-16 year olds and for 16-18 year olds. Also welcome is the duty on LEAs to form local curricula for learners ages 14-16 and on Welsh Ministers for learners aged 16-19 containing a range of options across the specified learning domains.
13. The designation of the five learning domains - mathematics, science and technology; business, administration and law; services for people; arts, media, culture and languages; humanities, social sciences and preparation for life and work - should provide a sufficiently broad curriculum opportunity for young people. The domains are based on the National Database for Accredited Qualifications. As set out in fforwm's April 2008 evidence, WAG should widely publicise this database and ensure that LEAs, colleges and schools are clear which courses fit into which domain.
14. The Measure will provide strong encouragement for institutions to work together. Partnerships should create a wider choice of courses and a greater sharing of facilities and expertise than an individual institution working alone is able to provide. Funding methodologies must, however, support and not, as they do as present, discourage partnerships. There needs to be a clear timetable for introducing the Measure.
15. Colleges broadly support the extension of duties on LEAs and on Welsh Ministers to ensure that there is an entitlement to a range of academic and vocational options. The proposal to give learners an entitlement to a minimum number of courses means that the needs of learners must take precedence over the needs of the institution in respect of the curriculum offer. This supports fforwm's evidence to the Webb Review⁴ that there should be a minimum entitlement enabling learners of all ages from 14 years of age upwards to have access to a wide range of academic and vocational learning routes, and to be able to progress from pre-entry through to level 5 and above within the educational system.

⁴ *Promise and Performance The Report of the Independent Review of the Mission and Purpose of FE in Wales in the Context of the Learning Country: Vision into Action*. Chaired by Sir Adrian Webb, Dec 2007

16. The proposal in the Measure to award a points score to courses (sections 6 and 10) to facilitate the setting of maxima for learner entitlement is helpful. This will give some clarity to what constitutes a course of study. For example, the Welsh Bacalaureate Qualification should attract far more points than a single subject. It is expected that WAG will consult further to ensure that this points system is fair and transparent.
17. In developing vocational provision for 14-16 learners, efforts should be made to respond to local labour market needs and create learning pathways that meet the requirements of local employers. This provision should be the result of local joint planning and contracting at local level between partners. As noted in para 5 of this response, vocational provision must involve cooperation between schools and FE colleges. It would not be an effective use of resources or provide value for the money invested if vocational courses were duplicated at local level.
18. fforwm notes that schools and FEIs will be under a duty to assist the LEA in the planning of the local curriculum and to determine cooperation as an option in delivering the entitlement to learning. In respect of FEIs, this 'duty' must be reflected in the articles of government for FEIs. A duty is stronger than a power in that it is a requirement placed on governing bodies. The articles of government will need to be amended accordingly. There should also be a duty on LEAs to work jointly with colleges.
19. fforwm recognises that a duty will need to be placed on governing bodies of further education institutions (FEIs) to consider whether 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. It is important that this duty requires a consideration of cooperation rather than a fixed duty to cooperate. A college governing body might, after carefully considering whether cooperation is needed to maximise the number of options available, decide that such a range is already in place. There would therefore be no need to cooperate. However, fforwm recognises the emphasis in the Proposed Measure on the importance of having a 'maximum number of courses of study' (sections 6 and 24) which means that institutions will be discouraged from offering learners only the minimum number of options. In addition, a local school might need to cooperate with a local college in order to offer additional subjects, even if the college itself had a sufficient range of courses to meet the needs of its own learners. A further and significant point is that schools and colleges might need to cooperate to ensure a broad range of courses available bilingually or through the medium of Welsh.

20. The clarifications setting out the grounds by which a headteacher may decide on or remove entitlement for a pupil aged 14 (sections 8 and 10) and a headteacher and principal may decide on or remove entitlement for a student aged 16 (sections 26 and 28) are helpful. However, at least one of the grounds for deciding on entitlement (sections 8 and 26) i.e. whether the amount of time to be spent travelling would be detrimental to the student's education, is a matter of opinion. General guidance should be issued although fforwm recognises that matters such as these will often depend on the professional judgment of senior academic leaders. Decisions should be made from the point of view of the learner. The provisions relating to the removal of entitlement must not become reasons preventing cooperation.
21. The wording in the proposed Measure for joint working (Clauses 12 and 13 and 29 and 30) is helpful in clarifying the definition of cooperation by including more formal collaboration arrangements. These clauses in the proposed Measure need to be seen in the context of the current WAG consultation on Draft Regulations for Collaborative Arrangements⁵ and the soon to be published WAG proposals on post-14 Transformation.

(iv) What might be the barriers to delivering the policy agenda and does the proposed Measure take account of them?

22. In its response to the April 2008 proposals, fforwm drew attention to the following barriers.
- **the way colleges and schools are funded:** the National Planning and Funding System (NPFS) covering the funding of 16-19 year olds in schools and colleges still encourages competition by essentially rewarding institutions for the number of learners they enrol. The age-weighted pupil unit does not generate sufficient funding to support 14-16 year olds in schools attending courses provided by a local college. Therefore either a college runs these courses at a net loss; a school subsidises these courses at the expense of other pupils; or the courses do not take place.

The Measure will not affect this. However, WAG under the One Wales⁶ agreement is committed to review the funding of colleges and it is to be expected that the Review will consider the likely impact of the Measure. The Transformation document shortly to be published by DCELLS will invite Learning Partnerships to bring forward proposals for transforming post-14 education in their areas⁷. It is likely that some funding will be available to encourage such proposals.

⁵ *Delivering Skills That Work for Wales. Draft Regulations for Collaborative Arrangements between Further Education Institutions and Further Education Institutions and Schools.* Welsh Assembly Government July 2008

⁶ *One Wales* Commitment no 107, Plaid/Labour Manifesto, 2007

⁷ *'Transforming Education and Training Provision in Wales'* due to be published September 2008

Educational institutions are strongly influenced by how they are funded rather than external exhortations on what they should do. A radical overview of the funding of 14-19 provision is necessary (as recommended by Webb) to ensure that funding is calculated and allocated using the same methodology.

- **mistrust that exists between some schools and some colleges in some parts of Wales.** As the Measure is rolled out and the Transformation agenda is underway, relationships should improve as all sides recognise that the needs of the learner are paramount.
- **lack in some schools of learners being given impartial careers advice:** fforwm would have liked included in the Measure a stronger statement setting out the requirement for impartial advice. This could be lifted from the wording contained in the Education and Skills Bill (Clause 68)⁸ currently being debated in Westminster. This clause amends section 43 of the Education Act 1997 and in reference to careers advice states that:

(2B) Any such information must be presented in an impartial manner, and

- (a) any such advice must be advice which the person giving it considers will promote the best interests of the pupils concerned; and*
- (b) accordingly, in giving the advice, that person must not seek to promote, contrary to the pupils' best interests, the interests or aspirations of the school or of other persons or institutions'*

- **membership of local 14-19 partnership groups should reflect more closely the numbers of learners attending schools, further education and training providers, rather than the number of institutions attended by young people:** current representation often militates against FE colleges which may have far higher numbers of 16-19 learners than local schools but will only have one or two places on the local 14-19 partnership. This is not included in the proposed Measure but fforwm recognises that this can be dealt with under Guidance issued under 14-19 pathways.
- **drawing up common timetables and organising travel:** these are not addressed in the proposed Measure. However, these should be viewed as challenges to be overcome as education and training institutions work more closely together rather than problems preventing things happening. It will be important to consider examples of good practice where timetabling and travel arrangements have developed in a way that supports learning and benefits learners. For example, the use of up-to-date effective e-learning approaches might assist in cutting down travel.

⁸ Education and Skills Bill 2007 Clause 68 (2). As amended in Committee 22 July 2008

- **reference not made to possible sanctions on institutions that fail to deliver the appropriate range of options:** the Measure is silent on possible sanctions on institutions failing to provide a minimum level of options. If there are no sanctions (such as a reduction in funding), then the Measure will not work. An example might be one institution being unwilling to take part in spite of an agreement being made locally to develop a broad curriculum. Sanctions need to be proportionate. There will also need to be an appeal mechanism independent of the LEA and the institution.

A more positive approach might be to use rewards rather than sanctions. Thus a school or FEI might be rewarded with some additional funding if they were to develop sufficient numbers of options within the agreed timescale.

- **Welsh medium & bilingual provision:** the Measure will need to explain whether a particular course that is offered in both Welsh and English will be considered as a single option or as two separate options. DCELLS' forthcoming Welsh-medium Education Strategy will need to consider how the range of options at the age of 14 and 16 can be made available through the medium of Welsh and/or bilingually. Consideration will need to include the learning resources available, the capacity of tutors and the investment needed to bring about a broadening of options through the medium of Welsh.

Conclusion

23. fforwm broadly welcomes the proposed Measure as it focuses on the curriculum entitlement of 14-19 years olds and the importance of widening opportunities. A number of sections of the legislation need to be tightened or clarified (e.g. those relating to sanctions on non-cooperation and Welsh-medium provision) and the number of options should be set at a level which provides real choice for young people with respect to vocational and academic qualifications and which takes account of research indicating the impact of this approach.
24. Because the implementation of the Measure may radically change local arrangements, the requirement to move towards a minimum number of options should be phased in over a two-year period, with a maximum of four years from the start of the 2009/10 academic year. A clear strategy will be needed to increase the number of options available through the medium of Welsh or bilingually. This will require investment, and careful planning and management.

25. Research should be conducted to establish: the impact of the policy of having a minimum and maximum number of options; whether having a minimum number of vocational subjects broadens choice to learners and increases the take-up of vocational courses; and whether the Measure raises overall retention from the age of 16 and achievement rates at the age of 16 onwards

Additional Drafting point

In the Measure, the use of the term 'institution' is sometime misleading. In the early stages of the Measure the term institution is clarified to mean 'an institution within the further education sector in Wales' (introduction to the Measure, clauses 11, 12, 13 and 15.). Later in the Measure the term 'institution' alone is used - clauses 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

In Section 33, which amends Section 33L of the Learning and Skills Act 2000 (c21), institution is defined as follows:

"institution" means an institution within the further education sector unless the institution provides education wholly or mainly for persons with a learning difficulty (within the meaning of Section 41), the word 'institution' is used.

Section 41 of the Proposed Measure under the heading 'Learning Pathways Interpretation', states:

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

"institution within the further education sector" ("sefydliad yn y sector addysg bellach") has the same meaning as in the Education Act 1996 (c56)

It is suggested for the sake of clarity and the avoidance of doubt that the Proposed Measure uses the same definition of 'institution' throughout.