

LEARNING AND SKILLS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II - National Council for Education and Training for Wales (Cetw)

Sections 30 to 49 and Schedules 4 and 5

72. These sections and Schedules make provision for the establishment of the CETW, its functions, the establishment of committees, and powers of the National Assembly in relation to the CETW.

Section 30 and Schedule 4: the CETW

73. **Section 30** and **Schedule 4** provide for the establishment of a new corporate body, the National Council for Education and Training for Wales (CETW). The CETW will be an Assembly Sponsored Public Body and its members will be appointed by the National Assembly for Wales. In making these appointments, the National Assembly will seek to appoint people with experience relevant to the CETW's functions, including people with current or recent business experience. The CETW's functions are to be carried out only in relation to Wales.
74. **Schedule 4** makes provision about members and staff of the CETW; procedural matters, including the CETW's accounts and provision for the National Assembly to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office. The Schedule sets out provisions for disclosure of members' interests. The CETW will not be an agent of the Crown and its staff will not be civil servants.

Sections 31 to 33: the CETW's main duties

75. **Section 31** sets out the duty of the CETW to secure the provision of 'proper' facilities for the education and training of people from 16 up to the age of 19. Facilities are 'proper' if they are of sufficient quantity and adequate quality to meet the reasonable needs of young people. The CETW must make best use of its resources and, in particular, avoid provision that might give rise to disproportionate expenditure. Provision is not to be considered as giving rise to disproportionate expenditure solely because it is more expensive than comparable provision, for example, special provision for people with learning difficulties. **Section 32** sets out the duty of the CETW to secure the provision of 'reasonable' facilities for the education and training of people 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the CETW can reasonably be expected to provide taking account of the resources available to it. The effect of wording of sections 31 and 32 on the exercise of these two duties is that the CETW will give priority to meeting the learning and skills needs of the younger age group. The duties do not extend to the provision of higher education which is the responsibility of the Higher Education Funding Council for Wales.
76. In performing the duties in respect of both age groups the Council must take into account a number of factors, including the education and training required in different sectors of employment. It must also bear in mind that other bodies, both statutory

and private, also provide education and training and therefore that it might reasonably expect education and training to be secured by other bodies without drawing on the Council's resources. The Council must also make best use of its resources and in particular avoid provision which might give rise to disproportionate expenditure (for explanation of "disproportionate expenditure" see the explanation of the equivalent provision for the LSC in sections 2 and 3).

77. Unlike the duties of the FEFCW under the Further and Higher Education Act 1992, no distinction is drawn between full- and part-time education in the education and training provision which the CETW must secure for the two age groups. Nor is there a limitation on the education which may be secured by reference to a particular type of course. The CETW will secure provision of education and training in school sixth forms (through funding LEAs from 2001-02, see section 36), in FE colleges, and in work-based training on the premises of employers, and with private training providers and voluntary organisations. The reference to 'organised leisure-time occupation', which is included in the definition of further education in section 2 of the Education Act 1996, covers a wide range of organised activities offering opportunities for non-formal types of learning and which do not necessarily lead to a qualification.
78. **Section 33** sets out the CETW's duty to promote participation of individuals in post-16 education and training and to encourage employers to become involved in its support and delivery.

Sections 34 to 39: the CETW's main powers

79. **Sections 34 and 35** set out the funding powers of the CETW. They are similar to sections 5 and 6 which relate to the LSC (see paragraphs 43 to 46 of these Notes). The CETW may disburse funding itself or arrange for others to do so. Under section 34(3) the CETW may allocate resources by reference to fees or charges payable by the person participating in education or by reference to other matters connected with that provision of education (such as transport or childcare). Section 35 enables the CETW to impose conditions on the funding it provides, including access to accounts and documents, and information from persons in connection with the discharge of its functions. The section also allows the CETW to require providers of post-16 education and training to charge fees, make awards and recovers sums of money against specified criteria. The conditions set by the CETW can relate to provision made by providers with respect to people with disabilities.
80. **Section 36** provides for the CETW to have the same role in respect of funding of school sixth form provision in Wales as the LSC will have in England (see section 7).
81. **Section 37** provides for the CETW to assess the quality of the provision it funds, and to take judgements about quality into account in deciding which providers it continues to fund. The intention is that the CETW secures value for money, and that learners are offered provision of a high quality. Findings from the Inspectorate, Estyn, will inform these judgements, but this input will not provide regular, comprehensive information on all providers. Therefore, it is intended that the CETW will take steps to investigate on its own behalf the quality of provision it funds, through for example, visiting providers, putting arrangements in place for investigating complaints and acting on those which are well-founded, and having clear published performance indicators and benchmarks against which to measure the quality of provision. The CETW may also draw up a list of accredited provision which meets certain quality thresholds, and cease to fund provision which does not.
82. **Section 38** provides for the role of the CETW in relation to Individual Learning Accounts (see also sections 104 to 109). The CETW is given the power to be involved in the promotion of Individual Learning Accounts and to be involved in the administration of qualifying arrangements under section 105. It is also given power to enter into arrangements with the National Assembly to make grants, to specify the kinds of

learning provision which qualify for the grants and to approve providers to make them eligible to offer learning provision which qualifies.

83. **Section 39** provides a power for the CETW to appoint up to two additional governors to the governing body of an institution in the FE sector which mainly serves the population of Wales. It may wish to use this power, for example, where it considers there might be mismanagement or potential mismanagement by the governing body, or where there are signs that the educational provision at the institution is failing.

Sections 40 to 44: the CETW's other functions

84. **Section 40** sets out the role of the CETW in relation to information provision and research. The CETW has a power to carry out research and to provide the National Assembly with information regarding any of its functions as it sees fit. The section also gives the CETW two duties - to provide the National Assembly with information or advice on request, and to establish systems for collecting information to help inform the quality of its decisions about post-16 education and training.
85. The section also gives the CETW a power to secure the provision of facilities for providing information, advice and guidance about education, training and connected matters, including employment.
86. **Section 41** requires the CETW to pay particular regard to the needs of people with learning difficulties when performing its duties to secure facilities for education and training under sections 31 and 32, when providing resources for education and training under section 34(1)(a) to (d), and when exercising its power to secure facilities for work experience under section 34(1)(g). In particular, the CETW must have regard to a report of an assessment of a person's needs made under section 140. Learning difficulties are defined at section 41(5). This definition is derived from provisions for further education in section 4 of the Further and Higher Education Act 1992 which is repealed by this Act.
87. **Section 41** also describes the CETW's main responsibilities regarding the funding of boarding accommodation for those with learning difficulties. For those between the ages of 16 and 19, the CETW must provide boarding accommodation where it is satisfied that it cannot make arrangements for an individual which are sufficient in quantity and adequate in quality unless it also secures boarding accommodation. For those between the ages of 19 and 25, the LSC must provide boarding accommodation where it is satisfied that it cannot secure the provision of reasonable facilities for individuals unless it also secures boarding accommodation. For those over the age of 25, the CETW has a power to make such arrangements if it is satisfied that without it, provision for an individual learner would not otherwise be reasonable. Those provisions should be read alongside the CETW's main duties at clauses 31 and 32.
88. **Section 42** requires the CETW to have due regard to the need to promote equality of opportunity between people from different racial groups, between men and women, and between people with a disability and people without. It must make an annual report on what arrangements for this it has made during the year, how effective they were and its plans for the following year. It must send a copy of the report to the National Assembly.
89. **Sections 43 and 44** set out the planning the CETW is required to undertake. Two separate types of plan will be prepared: an annual business plan and a three-year rolling strategic (corporate) plan. Its annual business plan must include any measures the CETW intends to take to meet objectives the National Assembly may set, and its financial plans for the year. The CETW's three-year plan will set out its strategy for the future development of activities and provision funded by the CETW. This will include its strategy for workforce development. The National Assembly must approve any plans it receives or require the CETW to make specified alterations to them. The CETW is under a duty to make the alterations required. The Council must publish the plans as approved or modified at such time and in such manner as the National Assembly thinks fit. The

CETW may also make and publish such other plans as it thinks fit, but these must not conflict with the plans approved by the National Assembly.

90. **Section 45** provides for the CETW to have regard to any information received from a body designated by the National Assembly. This might include, for instance, Awdurdod Cymhwysterau, Cwricwlwm ac Asesu Cymru (ACCAC, the Qualifications and Curriculum Authority for Wales) which holds information on the nature and availability of accredited provision in particular areas and on issues of financial propriety connected with this provision. This information is likely to be relevant to the activities of the CETW.
91. **Section 46** gives the CETW additional general powers which it may exercise to enable it to perform its other functions. The provisions in this section are similar to those in section 18. The CETW may not borrow or lend money, or subscribe for or otherwise acquire shares or securities of a company without the consent of the National Assembly. The section also enables the National Assembly to confer, by order, additional functions relevant to education or training in Wales on the CETW.

Sections 47 to 51 and Schedule 5: miscellaneous

92. **Section 47** gives the National Assembly a general power to give directions to the CETW, with which the CETW has a duty to comply. Directions may not relate to the funding of activities carried on by individuals or individual bodies. The National Assembly currently has a similar power to give directions to the FEFCW (see section 56 of the Further and Higher Education Act 1992). The National Assembly will be able to intervene if it considers that the CETW has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of its functions.
93. **Section 48** introduces **Schedule 5** which enables the CETW to establish a regional committee for each region of Wales and such other committees as it thinks fit. These provisions differ from the approach in England where the LSC is under a duty to establish local learning and skills councils. Unlike the provisions relating to local learning and skills councils in England there are no provisions for guidance, planning and consultation specified in the Schedule for regional committees in Wales. If the CETW exercises its power to establish regional committees Schedule 5 provides only that a regional committee must perform with regard to its area such of the Council's functions as the Council specifies subject to the approval of the National Assembly or must advise the Council on matters relevant to education and training in its area which the Council specifies. Schedule 5 also contains general provisions about the membership and administration of committees of the CETW.
94. **Sections 49 to 51** relate to financial and reporting matters. **Section 49** gives the National Assembly the power to fund the CETW by making grants, which may be subject to conditions including conditions on the funding of others by the CETW. Those conditions may not relate to the funding of activities carried on by particular individuals or of individual bodies. **Section 50** requires the CETW to report annually on its activities to the National Assembly. The report will include a financial report. **Section 51** defines the CETW's financial year.