

EDUCATION (WALES) MEASURE 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Education (Wales) Measure 2011 as passed by the National Assembly for Wales on 29 March 2011 and approved by Her Majesty in Council on 10 May 2011.
2. The Welsh Assembly Government's Department for Children, Education, Lifelong Learning and Skills has prepared them in order to assist the reader of the Measure. They do not form part of the Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section is self-explanatory, no further explanation or comment is provided.
4. The Measure makes provision about:
 - collaboration between local authorities, governing bodies of maintained schools and Further Education Institutions ("FEIs");
 - giving local authorities a power to establish a federation of schools;
 - the training of school governors and improvements to the clerking of governing bodies;
 - preventing schools in the future from changing category so as to become foundation schools and to prevent new foundation schools being established.
5. In respect of powers to require collaboration between local authorities, school governing bodies and governing bodies of FEIs, the National Assembly for Wales ("the Assembly") has the competence under Matters 5.2B, 5.2C, 5.12 and 5.13 contained in Field 6 of Part 1 of Schedule 5 to the Government of Wales Act 2006. For school governance, competence is under Matter 5.2A. In respect of the provisions preventing maintained schools changing category to become foundation schools and preventing the establishment of new foundation schools, the Assembly has the competence to make a Measure that would allow provisions around the category of 'foundation schools' under matters 5.1 and 5.2.

COMMENTARY ON SECTIONS

Part 1: Collaboration by education bodies

Section 1 – Education bodies

6. Part 1 of the Measure confers functions on education bodies in connection with arrangements to collaborate. This section defines as education bodies, a local authority, the governing body of a maintained school, a further education corporation, and a further education institution which is designated under section 28(4) of the Further and Higher Education Act 1992.

Section 2 - The collaboration objective

7. This section sets out the objective of Part 1 of the Measure, which is to secure the effective and efficient use of public resources in relation to education and training up to the age of 19 (“the collaboration objective”).

Section 3 - Duty of education body to collaborate

8. Subsection (1) places a duty on an education body to consider from time to time, when exercising its other functions, whether the exercise of its powers of collaboration would further the collaboration objective. A local authority’s other functions consist only of its education functions (see the definition of “functions” in section 8). If it considers that collaborating would further the objective, the education body must seek to exercise its powers of collaboration (subsection (2)).
9. Subsection (3) limits the duty to consider collaboration imposed on further education institutions to the provision of education for those up to 19.

Section 4 - Meaning of ‘powers of collaboration’

10. Section 4 defines the meaning of ‘powers of collaboration’. For all education bodies these are the powers in section 5 and for local authorities these also include powers in other legislation.

Section 5 - Powers to collaborate

11. This section confers on education bodies broad powers to enable them to collaborate for the purpose of discharging or facilitating the discharge of their duties under section 3 of the Measure, section 33K of the Learning and Skills Act 2000, section 116J of the Education Act 2002, or the duty of another education body under those provisions. Section 33K of the Learning and Skills Act 2000 and section 116J of the Education Act 2002 impose duties to collaborate in connection with the delivery of the local curriculum.
12. Section 5 allows an education body to collaborate with another education body to facilitate the discharge of that other education body’s duties, whether or not that would facilitate the discharge of its own duties.
13. The powers to collaborate include powers to delegate functions and to arrange for joint committees to carry out their functions.
14. Whilst the Measure confers the same powers on all types of education body covered by the Measure, it does not empower or compel other bodies to collaborate with an education body. However, such bodies may be able to do so under their existing powers.
15. Subsection (3) provides that these new powers do not affect any education body’s powers in any other legislation and that they are limited by any provision which may be made in regulations under section 6.

Section 6 - Regulations about the power to collaborate

16. Subsection (1) provides a power for the Welsh Ministers to make further provision by way of regulations about the power to collaborate. Regulations under this subsection could, for example, set out the functions that an education body cannot delegate to another body or to a joint committee.
17. Subsection (2) provides that regulations may make particular provision about the constitution and procedure of joint committees of the collaborating education bodies, and other connected matters.
18. Subsections (3) and (4) provide that regulations may modify any legislation relating to the functions of the collaborating education bodies, where those functions are delegated,

or relating to the bodies by whom those functions are to be discharged, in its application to those functions or bodies. Legislation may need to be modified in order to reflect the fact that another body or a joint committee may in fact be carrying out a particular function (in the place of, or as well as the education body on whom the function is conferred).

Section 7 – Guidance

19. Section 7 allows the Welsh Ministers to issue guidance about collaboration to which education bodies must have regard.

Section 8 – Interpretation of this Part

20. This section defines terms used in Part 1 of the Measure.

Section 9 - Minor and consequential amendments

21. Section 9 repeals, in so far as they apply in relation to Wales, section 26 of the Education Act 2002 and section 166 of the Education and Inspections Act 2006. Those sections made provision for regulations to be made allowing for collaboration between schools and for collaboration between further education bodies and between schools and further education bodies. The sections are now replaced, for Wales, by the provisions of Part 1 of the Measure, which impose duties in relation to collaboration. Section 9 also makes other consequential amendments.

Part 2: School Governance

Chapter 1: Federation of maintained schools

22. This Chapter replaces for Wales sections 25 and 26 of the Education Act 2002, making new provision for federating maintained schools. Federation allows for two or more schools to group together under a single governing body.

Section 10 - Federation of schools by governing bodies

23. This section gives governing bodies of maintained schools a power to provide that two or more schools federate, or that an existing federation federates with one or more schools, or that two or more existing federations federate under a single governing body. It further provides that the decision to federate under this section rests with the governing body concerned once they have complied with certain conditions and procedures set out in regulations.

Section 11 – Proposals by local authorities to federate schools

24. Subsection (1) provides local authorities in Wales with the power to propose that two or more maintained schools may federate, that an existing federation federates with one or more schools, or that two or more existing federations may federate, under a single governing body.
25. Subsection (2) provides that if a local authority makes proposals to federate schools or federations under this section, it must publish those proposals. Subsection (3) provides that a local authority is to consult with certain bodies about the published proposals.
26. These requirements to publish and consult do not apply to a proposal to federate small schools. A small school is defined by an order made under section 15 of the Measure. Where there is such a proposal, sub-section (5) requires a local authority to consult only with the governing bodies of the small schools to be federated.
27. Subsection (7) provides that a local authority must determine any proposals to federate schools. Regulations will set out the procedure for determining proposals. The local

authority may confirm the proposals (with or without modification or subject to the occurrence of an event) or withdraw them.

28. Subsection (8) allows local authorities to consider federating with schools maintained by another local authority providing they obtain the consent of the other local authority.
29. Subsection (9) requires the consent of certain persons before a local authority may propose a federation that include a foundation or voluntary school. Those persons are, in the case of a Roman Catholic or Church in Wales school, the diocesan authority, and for other foundation or voluntary schools, the persons who appoint the foundation governors.
30. Subsection (10) provides that regulations may specify requirements in relation to proposals to federate. These could include, for example, requiring the consent of certain persons to be obtained before an authority can make, publish or confirm proposals. Regulations made under this sub-section may make different provision for a federation involving a small school.

Section 12 – Implementation of proposals under section 11

31. This section makes provision about the implementation of proposals to federate.
32. Subsections (2) and (3) set out who is required to implement the proposals. These are the local authority or the governing body in so far as the proposals provide for this, and any other person set out in regulations.
33. Where a local authority has confirmed proposals they must be implemented as confirmed (subsection (4)). However, confirmed proposals may be modified at the request of persons specified in regulations (subsection (5)).
34. Under subsection (6) a local authority can determine not to implement a confirmed proposal if it would be unreasonably difficult to do so or if circumstances have changed so much that it is no longer appropriate to do so. Regulations may require the local authority to consult prescribed persons before making that determination (subsection (7)).

Section 13 – Single governing body for federations

35. A federation is a group of schools with one governing body. Schools within a federation will continue to be treated as individual schools (so that in exercising its duties the governing body must do so in relation to each school within a federation individually). However regulations can set out the circumstances when the schools within a federation can be treated as a single school.

Section 14 – Regulations in relation to federations

36. This section provides that regulations may make further provision in relation to federations, including in relation to their dissolution and the transfer of property, rights and liabilities.

Section 15 – Identification of small maintained schools in Wales for the purposes of this Chapter

37. This section provides a power for the Welsh Ministers to make an order defining a “small maintained school” by the numbers of pupils in a school. The numbers of pupils would be those specified on a given date in a school year. Once a small maintained school is defined, the Welsh Ministers will be able to use their powers in section 16 to direct the federation of such schools.

Section 16 - Federation of schools causing concern by direction of the Welsh Ministers

38. This section allows the Welsh Ministers to direct the federation of schools causing concern. It does this by inserting a new section 18B into Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (intervention in schools in Wales causing concern).
39. The new section 18B(1) and (2) explains what is meant by a school causing concern for the purposes of this power of intervention. It includes - a school in special measures; a school requiring significant improvement; a school at which pupils' standards of performance of the pupils are unacceptably low; a school where there has been a serious breakdown of management or governance which is prejudicing or likely to prejudice standards of performance; a school where the safety of pupils or staff is threatened; and a school which is failing to comply with a teachers' pay and conditions order.
40. Subsection (3) of the new section 18B allows the Welsh Ministers to direct a local authority or a governing body, and subsection (4) sets out the different types of arrangements they may direct. These include federating a school causing concern with another one or more schools or with an existing federation, and directing a school causing concern to leave a federation.
41. Subsection (5) of the new section 18B requires the Welsh Ministers to consult certain bodies before making a direction and subsections (6) and (7) make provision in connection with making, varying and revoking directions, including that directions are enforceable by a mandatory order of the High Court.
42. Section 16 of the proposed Measure also amends section 14(3) of the School Standards and Framework Act 1998 so that a local authority may not exercise its powers of intervention in relation to a school causing concern if the Welsh Ministers are exercising their power of intervention in the new section 18B.

Section 17 – Guidance given by Welsh Ministers

43. This section provides a power for the Welsh Ministers to issue guidance on federation to which to which local authorities, and a governing bodies of a maintained school in Wales must have regard to in exercising their functions under Chapter 1 of Part 2 of the Measure.

Section 18 – Federations: supplementary provisions

44. This section allows regulations to be made which modify Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (intervention in schools causing concern), and sections 49 – 51 and Schedule 15 to that Act (financial delegation) in their application to school federation. Regulations under this section could, for example, provide that where certain conditions that trigger powers of intervention exist in relation to one school within a federation, but not to others, those powers of intervention can nevertheless be exercised in relation to the governing body. Section 18 also allows for regulations to modify legislation relating to different categories of schools. Such regulations will make it clear how that legislation applies in relation to schools within a federation which belong to different categories.

Section 19 – Minor and consequential amendments to the Education Act 2002

45. This section makes consequential amendments to sections 19 and 20 of the Education Act 2002, so that those provisions refer to federations under the Measure. It limits the application of sections 24, 25 and 39 of the Education Act 2002 to England because they have been replaced, for Wales, by provision made by this Chapter. It also amends paragraph 5 of Schedule 1 to the Education Act 2002 to make it clear that if a school in

a federation closes and there is more than one school remaining in the federation, the governing body of the federation does not automatically dissolve.

Section 20 – Minor and consequential amendments to the Education Act 2005

46. This section makes a minor and consequential amendment to the Education Act 2005 so that it refers to federations under this Measure.

Section 21 – Interpretation of this Chapter

47. Subsection (1) defines terms used in Chapter 1 of Part 2 of the Measure. Subsection (2) provides for the interpretation of terms used in any enactment in relation to a federated school, so that, for example, a reference in legislation to a governing body of a maintained school has effect, in relation to a federation, as though it were a reference to the governing body of a federation.

Chapter 2: Training for governors and clerks and provision of clerks

Section 22 – Information and training for governors of maintained schools

48. Subsections (1) and (2) place a duty on local authorities to provide information to governors of maintained schools in Wales to enable the governors to carry out their functions.
49. Subsections (3) and (4) provide that regulations may require a local authority to secure (free of charge) the provision of prescribed training to school governors.
50. Subsection (6) provides that a local authority must provide training to governors to enable them to carry out their functions.

Section 23 – Duty of local authorities to provide clerks to the governing bodies of maintained schools

51. Regulations under section 23 of the Education Act 2002 provide for the appointment of a clerk to a governing body. Under this section a local authority must inform the body which appoints the clerk that it may ask the local authority to provide a person to act as the clerk. If the body makes such a request, regulations may require the local authority to provide a clerk and for a payment to be made for the provision of the service.

Section 24 – Training for clerks to the governing bodies of maintained schools

52. Regulations under this section can impose a duty on the body that appoints a clerk to a governing body (in accordance with regulations under section 23 of the Education Act 2002). The duty that can be imposed is to ensure that the person appointed as a clerk has completed training to a standard set out in the regulations. Subsection (3) provides that regulations may make further provision in relation to the training of clerks.

Section 25 – Duty of local authorities to secure availability of training for Clerks

53. This section imposes a duty on a local authority to secure the training it sees necessary for clerks to governing bodies.

Part 3: Foundation Schools

Foundation schools

Section 26 - Prohibition of establishment of new foundation schools

54. Chapter 2 of Part 2 of the School Standards and Framework Act 1998 (“the 1998 Act”) makes provision about the establishment, alteration and discontinuance of maintained schools in Wales. Section 28 of, and Schedule 6 to, the 1998 Act make provision about

proposals for the establishment and alteration of community, foundation, voluntary schools and maintained nursery schools, and the implementation of those proposals. This section amends section 28 of, and Schedule 6 to, the 1998 Act by removing the ability of local authorities or other promoters to propose the establishment of a new foundation school in Wales. This section also amends section 113A of the Learning and Skills Act 2000 to remove the ability of the Welsh Ministers to propose the establishment of a foundation school for pupils over the age of 16.

Section 27 - Prohibition of change of category to foundation school

55. Schedule 8 to the 1998 Act makes provision enabling schools in Wales to change categories. This section amends Schedule 8 to the 1998 Act so as to remove the ability of a local authority or a governing body to propose that a school change its category so as to become a foundation school. This will not prevent a school which is currently a foundation school changing category so as to become a different category.

Section 28 - Savings: proposals to establish new foundation schools

56. **Section 28** contains saving provisions. The amendments made by section 25 do not affect any proposal for the establishment of a new foundation school published prior to section 25 coming into force, and which has not been implemented. The proposal will therefore continue to be dealt with under section 28 of, and Schedule 6 to, the 1998 Act as though the amendments made by section 25 had not come into force.

Section 29 – Savings: proposals to change category to foundation schools

57. **Section 29** contains saving provisions. The amendments made by section 26 do not affect any proposal for a school to change from one category to another published prior to section 26 coming into force, and which has not been implemented. Such a proposal will be dealt with under Schedule 8 to the 1998 Act as though the amendments made by section 25 had not come into force.

Section 30 - Supplementary powers

58. This section allows the Welsh Ministers to make provision by order which they consider necessary or expedient to give full effect to sections 25 to 28. An order made by the Welsh Ministers under this power may, among other things, amend or revoke subordinate legislation.

Part 4: General

Section 31 - General interpretation

59. Subsection (1) defines terms used in the Measure. Subsection (2) provides that the Measure is to be read as one with the Education Act 1996. This means that the definitions in that Act are to be read across into this Measure, and the general provisions in that Act apply to the Measure. For example the “education functions” of a local authority are set out in Schedule 36A to the Education Act 1996, and that definition therefore applies to the term when used in this Measure. The definitions set out in the Measure take precedence over any used in the Education Act 1996 if there is a difference in meaning (subsection (3)).

Section 32 - Orders and regulations

60. This section provides for orders and regulations under the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.

Section 33 – Commencement

61. This section makes provision about commencement. Sections 25 to 33 come into force two months after the Measure is approved by Her Majesty in Council. The other provisions of the Measure will be brought into force by order made by the Welsh Ministers.

Section 34 - Short title and inclusion of Measure within the Education Acts

62. Subsection (1) provides that the title of this Measure is the Education (Wales) Measure 2011. This Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (subsection (2)). Any reference in legislation to “the Education Acts” will include a reference to this Measure.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

63. The following table sets out the dates for each stage of the Measure’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales’ website at: http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/proposed_education_wales_measure_2011.htm

| <i>Stage</i> | <i>Date</i> |
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| Introduced | 6 December 2010 |
| Stage 1 - Debate | 12 January 2011, 19 January 2011 (Private Session) |
| Stage 2 Scrutiny Committee – consideration of amendments | 1 February 2011 |
| Stage 3 Plenary - consideration of amendments | 2 March 2011 |
| Stage 4 Approved by the Assembly | 29 March 2011 |
| Royal Approval in Privy Council | 10 May 2011 |