



Llywodraeth Cymru  
Welsh Government

# **EDUCATION (WALES) BILL**

**Explanatory Memorandum**  
Incorporating the Regulatory Impact  
Assessment and Explanatory Notes

July 2013

## **Explanatory Memorandum to the Education (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Education and Skills Legislation Team of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Education (Wales) Bill, introduced by me on 1 July 2013 would be within the legislative competence of the National Assembly for Wales.

**HUW LEWIS AM**

Minister for Education and Skills  
Assembly Member in charge of the Bill

01 July 2013

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# 1. Description

1. The Welsh Government through the Education (Wales) Bill ('the Bill') seeks to legislate in the following areas:

Education Workforce Council - Registration and regulation of teachers and the wider workforce;

Reform of the registration and approval of independent schools in respect of special educational needs;

Post-16 assessment of educational and training needs and specialist Further Education (FE);

School term dates;

The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales under section 19 of the Education Act 2005.

2. The Minister for Education and Skills has made the following statement:

*"In my view development of the provisions of the Education (Wales) Bill has been undertaken with due regard to the United Nations Convention on the Rights of the Child, in accordance with the Rights of Children and Young Persons (Wales) Measure 2011".*

## 2. Legislative background

3. The National Assembly for Wales has the legislative competence to make provision in relation to education in Wales by virtue of section 108 of, and Part 1 (Subject 5: Education and training) of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”).
4. Subject 5 from Part 1 of Schedule 7 to GoWA 2006 is reproduced below:

### ***Education and training***

*5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.*

*Exception—*

*Research Council.*

5. Section 108 of GoWA 2006 is reproduced below:

### ***Legislative Competence***

- (1) *Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.*
- (2) *An Act of the Assembly is not law so far as any provision of the Act is outside of the Assembly’s legislative competence.*
- (3) *A provision of an Act of the Assembly is within the Assembly’s legislative competence only if it falls within subsection (4) or (5).*
- (4) *A provision of an Act of the Assembly falls within this subsection if –*
  - (a) *it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and*
  - (b) *It neither applies otherwise than in relation Wales.*
- (5) *A provision of an Act of the Assembly falls within this subsection if—*
  - (a) *it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or*
  - (b) *Is otherwise incidental to, or consequential on, such a provision.*

- (6) *But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—*
- (a) *it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,*
  - (b) *it extends otherwise than in only to England and Wales, or*
  - (c) *It is incompatible with the Convention rights of Community law.*
- (7) *For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (amongst other things) to its effect in all the circumstances.*

### **3. Purpose and intended effect of the legislation**

6. The Bill sets out a number of proposals that will enhance workforce planning, training and development. The Bill will introduce a new, more robust registration system that will bring greater coherence and recognise the contribution of the whole education workforce to the education of all learners in Wales.
7. The Bill will bring greater coherence by changing the way that school term dates are set so that they may be harmonised across all maintained schools in Wales.
8. The Bill will also support provision for learners with special educational needs by reforming the way independent schools are registered and approval to provide education for learners with SEN. It will also provide for better transition for SEN learners from school into further education by placing responsibility for assessing the needs of, and securing specialist post-16 education for learners with learning difficulties and/or disabilities with the local authority.

#### Education Workforce

9. In February 2011, the Minister for Education and Skills set out his agenda to raise standards of education in Wales. The Welsh Government has committed to improve educational standards and attainment for the people of Wales and that the wider education workforce practitioners work together effectively.
10. A key feature of many professions is that they register with a professional body that sets and maintains professional standards, and so retains public confidence and demonstrates a shared commitment to professionalism. Of the education workforce in Wales, currently only teachers are required to be registered with the General Teaching Council Wales that is, in order to teach in a maintained school in Wales, teachers have to be registered. The Bill will set a framework so that other sectors of the wider education workforce will also be required to be registered. The Bill also sets out the framework for and the remit of a newly named and reformed registration body, the Education Workforce Council.

#### *Current legislative arrangements*

11. Chapter 1 of, and Schedules 1 and 2 to the Teaching and Higher Education Act 1998 (the 1998 Act) make provisions for a registration system for teachers administered by the General Teaching Council for Wales (GTCW) In particular:

Section 1(2) of the 1998 Act sets out the principal aims of the GTCW, which are to contribute to improving the standards of teaching and the quality of learning and to maintain and improve standards of professional conduct amongst teachers, in the interests of the public;

Section 1(5) to (7) and Schedule 1 of the 1998 Act make provision about, the constitution, membership, staffing, governance and finance of the GTCW;

Section 4 of the 1998 Act provides that any regulations made by the Welsh Ministers in relation to registration can make provision about authorising the GTCW to charge fees;

Section 12 of the 1998 Act gives the Welsh Ministers a regulation making power requiring the employers of registered teachers to deduct, or arrange for the deduction, from the teacher's salary of any fee payable in respect of registration and to remit it to the GTCW. Such regulation may also provide for exceptions and arrangements to be made by the teachers' employer for the deduction and remittance of such fees, the administrative charges which may be deducted, and the notification to the GTCW of specified particulars relating to teachers;

Sections 14-15A of the 1998 Act makes provision for the supply of information in respect of teachers.

### *Background*

12. The education workforce in Wales has changed significantly in the last ten years. Options available to learners in Wales through collaboration between schools and post 16 providers have led to much closer working of practitioners between different sectors. Reforms such as the Foundation Phase and 14–19 Learning Pathways require learning support staff, teachers and post 16 teachers, trainers and lecturers to collaborate in supporting learners more effectively.
13. There are considerable differences between the requirements for the wider education workforce in:
  - Professional standards;
  - Qualifications;
  - Initial training;
  - Performance management; and
  - Continuing professional development.
14. While some of these differences are entirely appropriate, reflecting real differences in sector requirements, others are more artificial, creating barriers to cooperation and mobility among the workforce. It also does not assure the public that all education professionals exhibit similar high standards of professional conduct and competence.



15. There are a large number of professionals working in the education workforce, with over 21,300 school support staff and just over 8,810 (full time equivalent) direct teaching staff in the FE sector (in 2010/11) who are currently not required to register. Currently only the 38,000 teachers working in maintained schools in Wales are required to register. In other sectors, the data collection has been limited and therefore makes workforce planning difficult across the wider education sector.
16. Professionalism, suitability and standards of conduct, training and development are key to the success of the education workforce. In order to achieve Welsh Government (WG) ambitions to have a high performing education system those working in all sectors must be able to access well designed qualifications, support and development. This recognise the role of all those working to support teaching and learning as part of a single and coherent education workforce in Wales.
17. A key feature of many professions is that they register with a professional body that sets and maintains professional standards. Currently every qualified teacher, who carries out specified work in a maintained school in Wales, must be registered with the GTCW. This brings benefits of accountability, transparency and assurance of standards. The scope and functions of GTCW as currently provided in legislation are limited to teachers in maintained schools in Wales. This looks anomalous and undermines the vital part that all education practitioners play in delivering education for learners and raising standards within a wider education workforce.
18. With increasingly diverse arrangements and partnerships across the education workforce, coming together to more effectively meet the needs of learners, it is no longer sufficient to only require the registration of teachers and not other education practitioners delivering education for learners in Wales.

### *Objectives*

19. The Bill will rename and reform the existing registration body GTCW with the objective that it will contribute to raising standards of educational practice.
20. The register, held by the Council, will continue to cover teachers working in maintained schools in Wales (which is an existing compulsory requirement) and in addition, extend registration to a wider group of practitioners. In the first instance, the aim is to extend the obligation to register to:
  - school learning support workers;
  - FE teachers and learning support workers;
21. The intention is to further extend the obligation to register to:
  - work based learning (WBL) tutors and learning support staff; and
  - youth workers.

22. This would be done through the use of the regulation making powers.
23. One of the Bill's objectives is that particular specified work will only be undertaken in Wales by a person registered to undertake such specified work. The type of work that will require registration will be specified in regulations made under the Bill.
24. The WG want the reformed registration body, the Education Workforce Council in its work of registering the wider education workforce to be a key partner in delivering better coherence, supporting the improvement agenda to help to drive up standards, maintaining and enhancing public confidence in the profession.
25. The changes made by the Bill provide the following in relation to the Education Workforce:

*Education Workforce Council*

26. The Bill makes provision to change the name of the current registration body to the Education Workforce Council (formerly the GTCW) and to extend registration, qualification and training requirements to the wider education workforce.
27. The Education Workforce Council (the Council) will have two aims:
  - To contribute to the improvement of standards of teaching and the quality of learning in Wales; and
  - To maintain and improve standards of professional conduct amongst teachers and others in the education workforce who support teaching and learning.
28. The main functions for the Council in meeting its aims are to:
  - Provide advice to the people that are registered;
  - Promote the careers of the education workforce that are able to register;
  - Establish and maintain a register;
  - Review and revise the Code of Conduct and Practice which details the standards of professional conduct for the education workforce that are required to register; and
  - Hold and provide information.
  - Keep itself informed about the induction and appraisal of the education workforce

## Investigation unacceptable professional conduct and incompetence

29. The Bill seeks to ensure that there is flexibility to meet the changing needs of the education workforce both now and in the future and includes provisions to extend the functions of the Council, following consultation, and for Welsh Ministers to make directions to the Council.

### *Provision of advice and promotion of careers*

30. The Welsh Ministers will be able to request/consent to the Council providing advice relating to the wider education workforce (that is required to register); including issues such as training, continuing professional development and the recruitment, retention and supply of staff. In addition, with the consent of Welsh Ministers, the Council will be able to provide and publish advice on issues relating to teaching and learning.
31. The Welsh Ministers already have the power to promote careers in the school workforce and to arrange that another body or person exercises that power. Previously Welsh Ministers have relied on the promotion of teaching to be undertaken via a contract approach with relevant organisations in England. However, the intention now is to undertake this work on a Wales only basis and to cover the wider education workforce. Activities will be designed to promote the recruitment to the professions who will be required to register with the Council, including giving advice; organising conferences and lectures; and arranging publication of materials.

### *Registration of education workforce*

32. The Council will be required to establish and maintain a register to comprise of all those registered within particular categories of the education workforce. Personal details that will be held on the register include name, contact address, employment, qualifications and professional development. Information held on the register will be available to: the registered individual who will have full access to their record; employers who can make employment or pre-employment registration checks; and the general public who will be able to check only whether an individual is registered with the Council or not.
33. The following categories of the education workforce must register:
  - School teachers;
  - School learning support workers;
  - FE teachers; and
  - FE learning support workers.
34. The Bill also provides the Welsh Ministers the power to add, remove or modify the categories, but this power is subject to the Assembly's approval.

35. A person will be eligible for registration if they meet the following conditions:
- i. fall within a category of registration and have satisfactorily completed any induction period required for that category; or satisfy the requirements for provisional registration as set out by the Welsh Ministers;
  - ii. they are not barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006; not subject to a disciplinary order made by the Council; and not disqualified from an equivalent post in another part of the UK;
  - iii. the Council is satisfied as to their suitability to be registered in the category sought.
36. The Bill makes provisions allowing an individual who has been refused registration with the Council to appeal against that decision to the High Court.
37. The Welsh Government's consultation document *Proposals for registration of the education workforce in Wales*<sup>1</sup> included some early thoughts on the fee level and invited comments. Currently those registered with GTCW are required to pay an annual registration fee, which is currently set at £45.00 in order to maintain their registration. Comments raised some important issues and concerns and highlighted the need for further and more detailed consultation. The Bill adopts a similar model to that provided by the 1998 Act whereby the Welsh Ministers are given a regulation making power to make provision in respect of fees.
38. The Bill gives regulation making powers to the Welsh Ministers to make further provisions about the register as may be necessary or expedient to ensure that there is flexibility to meet the changing needs of the education workforce both now and in the future. Regulations in particular may make provision regarding the documentary and other evidence which is to accompany applications, the matters which are to be recorded on the register against the names of those registered, the information contained in the register which may be made available for inspection by members of the public and the circumstances and conditions to which that information may be made available.

#### *Requirements to be satisfied to provide services*

39. The Bill adopts a similar model to that provided by the 1998 Act and the Education Act 2002 where the Welsh Ministers have regulation making powers to make provision in respect of teachers' registration.
40. Currently a qualified teacher must be registered with the GTCW to be able to teach in a maintained school in Wales. Arrangements for the registration of teachers are set out in the School Teachers' Qualifications (Wales) Regulations 2012<sup>2</sup>. The 2012 Regulations prescribe the routes available to become a "qualified teacher". For example, successfully passing the Initial Teacher

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<sup>1</sup> <http://wales.gov.uk/consultations/education/workforceregistration/?status=closed&lang=en>

<sup>2</sup> <http://www.legislation.gov.uk/wsi/2012/724/contents/made>

Training; or an Employment based Teacher Training Scheme. Section 133 of the Education Act 2002 provides the Welsh Ministers with the power to make regulations that provide that specific work can only be carried out in a maintained school in Wales by a qualified teacher or a person who satisfies specified requirements. Regulations detailing the specified work for teachers are set out in the Education (Specific Work and Registration) (Wales) Regulations 2010<sup>3</sup>.

41. The Bill provides the Welsh Ministers with regulation making powers to prescribe that specified work cannot be provided by a person unless that person has met specified requirements. The requirements to be met will be different for each category of registration but those requirements may relate to qualifications, training, experience, or other specified condition.

#### *Induction and appraisal of registered persons*

42. Teachers have well established processes and requirements in place which relate to their induction and appraisal.
43. Induction is currently a statutory requirement for all newly qualified teachers (NQTs) in Wales and this is set out in regulations<sup>4</sup>. The statutory induction period provides all newly qualified teachers with a bridge from initial teacher education and training to effective professional practice.
44. The induction period usually takes place over three full terms (that is one school year) or the equivalent, though there is flexibility for teachers who work part-time, have breaks in their employment or work on a short-term supply basis. Induction for teachers in Wales comprises the following aspects:

A programme of professional development, monitoring and support based around the core priorities in the areas that are known to be key to improving standards of teaching and for improving learner outcomes. These priorities are literacy, numeracy, reducing the impact of poverty on attainment, additional learning needs (ALN), behaviour management, and reflective practice;

The support of a mentor throughout the induction period;

A 10% reduction in the newly qualified teacher's timetable (this is set in the School Teachers' Pay and Conditions Document); and

Assessment against the Practising Teacher Standards (PTS).

45. Performance management is a continuing process as a cycle involving planning, monitoring performance and reviewing performance. For teachers and leaders in schools this is a well established process which helps schools to improve by setting a framework for teachers and leaders to agree and review priorities and objectives in the context of a school's improvement plan. It

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<sup>3</sup> <http://www.legislation.gov.uk/wsi/2010/2710/made>

<sup>4</sup> <http://www.legislation.gov.uk/wsi/2012/1675/contents/made>

focuses attention on making teaching and leadership more effective to benefit pupils, teachers, and schools. The current statutory requirements for teachers and head teachers are detailed in guidance and regulations<sup>5</sup>. The performance management appraisal is separate from the disciplinary or dismissal procedures.

46. In order to raise standards, well designed systems of induction and appraisal for the education workforce are essential. However, the existing induction and appraisal arrangements for each category are at different stages of development – for example, the teachers’ induction and appraisal arrangements are now well established but the position is different for the other categories. The Bill takes these differing stages of development into account by giving the Welsh Ministers the regulation making power to make provision about induction and appraisal. That will enable different arrangements to be in place for different categories. This ensures that there is flexibility to meet the changing needs of the education workforce both now and in the future and make certain that arrangements meet the different requirements of the wider workforce.

#### *Code of conduct and practice for registered persons*

47. Parents, pupils and the wider general public, as well as the education profession itself, have a right to expect the education workforce in Wales uphold the highest professional standards.
48. The current *Code of Professional Conduct and Practice for Registered Teachers*<sup>6</sup> sets out the key principles of good conduct and practice for registered teachers in Wales, with the intention to guide teachers’ judgements and decisions and inform parents, pupils and the general public of the standards they can expect from registered teachers. The Code:

helps teachers, as members of a skilled and trusted profession so that they know the type of behaviour that is expected of them;

puts the welfare of children first by setting out clear boundaries of appropriate / inappropriate professional conduct and practice for registered teachers;

provides clarity for parents, pupils and the general public as to what they can expect from registered teachers; and

supports good practice by teachers

49. The Welsh Ministers will be required to prepare and publish the first Code of Practice and Conduct specifying the standards of professional conduct and practice expected of those required to register. This brings consistency with many other professions upon which the public rely, such as Medicine, Law, Nursing, Architecture or Engineering who have a Code – and demonstrates a shared commitment to professionalism across the wider education workforce.

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<sup>5</sup> <http://wales.gov.uk/topics/educationandskills/publications/guidance/performance-management/?lang=en>

<sup>6</sup> <http://www.gtcw.org.uk/gtcw/en/professional-conduct-a-competence/code-of-professional-conduct-and-practice>

50. The Code is intended to set out the key principles and standards of good conduct and practice for the registered education workforce in Wales. The Code may also provide for different standards for the different categories. After the first Code is published the Council will be required to review and revise the Code and in so doing to consult all persons and bodies with an interest in the Code.

*Disciplinary functions of the Council*

51. The GTCW currently operates disciplinary functions as set out in the Teaching and Higher Education Act 1998. GTCW are required to investigate and hear cases of:

Unacceptable professional conduct;

Serious professional incompetence; and/or

Where a teacher has been convicted at any time of a relevant offence, or it appears that a registered teacher may be so guilty or have been so convicted.

52. The disciplinary function is an important aspect of any registration regime and enhances public confidence in the registered profession ensuring that individuals maintain a minimum standard of professional conduct.
53. The Council will hold disciplinary functions, this means it will continue to perform disciplinary functions in relation to teachers but broadens the scope to capture the wider education workforce that will be required to register. The Bill makes provisions for the Council to carry out investigations in relation to individuals within the education workforce who are required to register. The Council will be required to carry out investigations and where it considers it appropriate, hear and determine disciplinary cases where it is alleged that a registered person is guilty of misconduct; professional incompetence; or has been convicted of a particular criminal offence. The Bill also makes provision for the Council to make a determination without a hearing if the registered person consents.
54. The Bill makes provisions for Welsh Ministers to make regulations about the form and content of how such hearings will be conducted (including notice requirements, compelling attendance and admissibility of evidence); about the disciplinary orders (when orders take effect and about the review of orders); and about the action that may be required of an employer of a person who has received a disciplinary order.
55. Where the Council has determined that a person is guilty it may make a disciplinary order. The Bill provides for the Council to make the following disciplinary orders:

**Reprimand** – where the person remains eligible for registration;

**Conditional registration order** – where the person remains eligible for registration but must comply with the conditions stipulated in the order;

**Suspension order** – where the person becomes ineligible for registration for a period of time (not exceeding two years) and subject to such conditions as stipulated in the order;

**Prohibition order** – where the person becomes ineligible for registration.

56. The Bill provides for a person to appeal (within 28 days) against their disciplinary order to the High Court. The decision from the High Court will be final.

#### *Information duties*

57. GTCW currently maintains the Register and records of qualified teachers in Wales, including records of those teachers who are subject to a disciplinary order and/or ineligible for registration. The Persons Providing Education at FE institutions in Wales (Conditions) Regulations 2007<sup>7</sup> requires that certain conditions are to be complied with in respect of persons providing education at FE institutions in Wales. Conditions relate to checks that must be carried out and a register that must be kept in respect of such persons.
58. The Council will be required to maintain records about the people that are required to register.
59. The Bill gives power for Welsh Ministers to make regulations about the records that are to be maintained by the Council and when the Council is required to maintain records about individuals who are not eligible for registration.
60. The Bill gives power to Welsh Ministers and the Secretary of State to provide information to the Council that is necessary for the purpose of the Council's functions. The Council will need to provide information as requested by Welsh Government for the purpose of statistical analysis and/or such functions as the Welsh Ministers may have in relation to the new registration categories. The Bill includes the power for Welsh Ministers to make regulations requiring the Council to provide information to other persons and bodies and to specify the purposes and conditions, under which that information can be provided.
61. The Bill extends the existing provisions in respect of the information to be supplied by the employers of all registered persons. Employers will be required to provide the Council with the name of any registered persons they employ, as well as such other information as may be reasonably requested by the Council in relation to the performance of its functions. Employers will be required to supply information to the Council where they have ceased to use the services of a registered person on the grounds of:

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<sup>7</sup> <http://www.legislation.gov.uk/wsi/2007/2220/contents/made>



Unacceptable professional conduct;

Professional incompetence;

Conviction of a relevant offence.

62. Where the employer might have ceased to use the services of a registered person on the same grounds, had the worker not stopped providing the services, employers will also be required to supply such information to the Council. Agencies will also be required to provide such information where they have terminated or would have terminated arrangements with the worker for the same reasons.
63. The Bill includes provisions for Welsh Ministers to direct the employer or agents to supply this information when they do not comply with the duty (or the Welsh Ministers think it is unlikely they will comply).

### ***Schedule 1 – Education Workforce Council***

64. Schedule 1 makes provision about the constitution and powers of the Council.
65. The Bill provides Welsh Ministers with the power to make an Order specifying the number of members the Council is to have, and/or to set the maximum and minimum numbers. Welsh Ministers will have the function of appointing members and in so doing must have regard to the desirability of that membership; include those with the necessary skills and experience to perform its functions efficiently and effectively. Also, the Welsh Ministers must secure that the majority of members are, or recently have been, registered persons. The Bill makes further provisions enabling Welsh Ministers to make regulations relating to members and their appointments, which may include eligibility and the procedure for an appointment. The Bill also makes provision about members' tenure and removal.
66. The Bill provides that the Council may make arrangements to pay to its members such remuneration, allowances and expenses as it may determine. The Bill requires that the Council prepare a scheme setting out the arrangements and procedures to be followed and to make such arrangements in accordance with their published scheme (which they are required to keep under review).
67. The Bill gives the Council the function to elect a Chairing member from amongst its membership.
68. The Bill makes provisions enabling Welsh Ministers to make regulations about the appointment of a Chief Officer. Provisions enable Welsh Ministers to specify in regulations who is to appoint the Chief Officer, the procedure for such an appointment and how the terms and conditions are to be determined. The Bill makes provisions for the Council to appoint such other employees as it considers appropriate.

69. The Bill requires that the Council prepare a scheme setting out its arrangements and procedures for the remuneration, allowances and expenses of its employees (save for the Chief Officer) and to make such arrangements in accordance with their published scheme (which they are required to keep under review).
70. The Bill makes provisions for the Council to establish Committees to facilitate the carrying out of its functions and retains provisions for Welsh Ministers to make regulations requiring the Council to establish a Committee and specify the purposes, membership and procedures of that Committee.
71. The Bill places a duty on the Council to establish an Audit Committee to review and scrutinise the Council's affairs. The Audit Committee will be required to make reports and recommendations to the Council in relation to any reviews conducted and must send copies of all its reports and recommendations to the Welsh Ministers. The Audit Committee is required to consist of at least two members of the Council and at least one lay person.
72. The Bill requires the Council to keep proper accounts and records in relation to their accounts and to prepare a statement of accounts to Welsh Ministers and the Auditor General for Wales no later than the 31 August after the end of each financial year. The Auditor General is required to examine, certify and report on the statement of accounts.

### ***Schedule 2 – Education Workforce Council***

73. Schedule 2 sets out the four categories of persons who will be required to register with the Council and provides a description of each category:

School teachers;

School learning support workers;

FE teachers; and

FE learning support workers;

74. The Bill gives the Welsh Ministers an order making power to add, amend or remove a category of registration but that power is subject to the Assembly's approval. This will ensure that there is flexibility to meet the changing needs of the education workforce both now and in the future. A requirement in this schedule is that before making an order the Welsh Ministers' must consult relevant persons.

### **Risks/Hazards if legislation is not made**

75. If the legislation is not made there will be a negative impact on the wider education workforce, who would continue to experience considerable differences in:

Professional standards;

Qualifications;

Initial training;

Performance management; and

Continuing professional development.

76. In order to achieve a high performing education system then all sectors must be able to access well designed qualifications, support and development. Registration provides for the appropriate infrastructure in order to deliver a highly performing education workforce that raises standards of teaching and learning across Wales.

#### Reform of the registration and approval of independent schools in respect of special educational needs

77. The Welsh Government is committed to the provision of high quality education services and to enabling all children to reach their potential. Meeting the needs of all learners and providing effective support for those with special educational needs is a key feature of an effective education system.
78. The Bill seeks to reform the way that independent schools register to admit learners with special educational needs (SEN) to reduce duplication and increase the information available about SEN provision in independent schools.

#### *Current legislative arrangements*

79. Any establishment wishing to operate as an independent school must apply to the Welsh Ministers under section 160 of the Education Act 2002.
80. Independent schools that admit pupils with statements of SEN it must first be approved by the Welsh Ministers under section 347 of the Education Act 1996.
81. If a pupil with a statement of SEN is to be placed in an independent school which has not been given approval under s347 the Local Authority may apply to the Welsh Ministers for their consent to place the pupil in the specified school.

#### *Background - Section 347 Approval*

82. Before an independent school can admit pupils with statements of SEN it must be approved by Welsh Ministers under section 347 (s347) of the Education Act (EA) 1996. For a child to be placed in an independent school under s347, Welsh Ministers will need to have approved one of two criteria.

The schools is approved to admit pupils with statements of SEN

An individual learner has been given specific approval to be placed in the school.

83. The Education SEN (Approval of Independent Schools Regulations) 1994 set out the criteria Welsh Ministers will need to consider before approving an independent school. The Welsh Government receives on average of 12 applications (under s347) for such consent each year.
84. Where consent for the admission of an individual pupil is sought a local authority must write to the Welsh Government enclosing a copy of a child's statement of SEN and a recommendation for that child to be placed in an independent school. The Welsh Government seeks advice from Estyn that the placement is suitable. This forms the basis of the Welsh Ministers' decision whether or not to grant consent to the placement. This process takes an average of 6 to 8 weeks.
85. If a school has been approved under s347 to admit pupils with statements of SEN the Welsh Government has an agreement with HMI Estyn that they will undertake an annual monitoring visit. Where individual consent under s347 has been given to allow the placement of a pupil existing powers do not allow an annual monitoring visit to be requested.

#### *Section 160 Application*

86. For an establishment to be classed and operate as an independent school initially it must apply to Welsh Ministers under s160 of the EA 2002. In making this application for independent status a school must include specific prescribed information including:
  - the age range of pupils;
  - the maximum number of pupils;
  - whether the school is for male or female pupils or both;
  - whether the school provides accommodation for pupils;
87. In addition to this information the school must also include details of whether it admits pupils with SEN regardless of whether they have a statement.
88. It is this requirement the Welsh Government feels is particularly important for the purposes of this legislation.

#### *Objectives*

89. The Welsh Government's policy objective is to ensure consistency of approach and monitoring, increase transparency and minimise bureaucracy.
90. The Welsh Government is of the opinion that to have the requirements of both s347 of the EA 1996 and s160 of the EA 2002 in relation to placement of pupils

with SEN is unnecessary and results in inconsistency in relation to monitoring of standards; a far more efficient system is a single registration system.

91. The aim of the Bill is to simplify the registration process for independent schools so that there is a single category of schools under one piece of legislation. For the purpose of this single registration system the Welsh Government considers the system under s160 to be the more appropriate choice.
92. Therefore the Bill will repeal s347 of EA 1996 and amend s160 of the EA 2002 to change the way in which independent schools register to accept learners with SEN including those with statements.
93. The Welsh Government considers s160 to be preferable for the following reasons;

Currently, under section 347 independent schools must be approved by Welsh Ministers to admit learners with statements of SEN. Where general approval for the school does not exist such approval must be obtained on a case by case basis. Seeking consent for a specific child in a particular school is unnecessarily time consuming and bureaucratic, removing this requirement will speed up the placement process reducing delay and minimising the frustration for parents and learners often felt in finding placements.

The registration process under s160 will allow the registration of independent schools and the SEN approval process to be carried out under a single piece of legislation.

All schools registered under the amended s160 process will fall within the scope of Estyn monitoring arrangements and be subject to an annual monitoring visit. Copies of the summary reports from these monitoring visits will be made available on the HMI Estyn website increasing transparency.

All independent schools wishing to admit learners with statements of SEN will, in future, also be required to specify the principal type of SEN education that they provide.

Local authorities, learners and parents will have access to more information on the choice and type of provision to inform their decisions about placement of pupils with SEN.

Local authorities will be able to make their own judgement on individual schools without reference to or need for approval of Welsh Ministers; this will be more efficient and timely for both parents and local authorities.

#### Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities

94. The Welsh Government is committed to the provision of high quality education services and to enabling all children to reach their potential. For children and

young people with additional learning needs the imperative is to remove barriers to participation. Meeting the needs of all learners and providing effective support for those with additional learning needs is a key feature of an effective education system.

95. The Bill seeks to improve the assessment of additional learning needs for Post-16 learners. It seeks to support better transition planning for learners moving from school to FE, facilitate better liaison between schools, local authorities and FE colleges and specialist providers. Its core objective is to bring about a less complex and bureaucratic system that better meets and protects the needs of learners whilst also delivering value for money.

#### *Current Legislative Arrangements*

96. Welsh Ministers currently have a general duty under sections 31 and 32 of the Learning and Skills Act 2000 to secure proper provision (for those between 16 and 19) and reasonable (for those over the age of 19) facilities for education and training for learners.
97. Section 140 of *the Learning and Skills Act 2000* places a duty on the Welsh Ministers to make arrangements for the assessment of young people, under the age of 19, who have statements of special educational need, where it believes that they are likely to leave school at the end of the last year of compulsory schooling to receive post-16 education or training or higher education. The assessment must be made during the final year of compulsory education and will set out a person's educational and training needs and the provision required to meet those needs.
98. Section 140 also gives power to the Welsh Ministers to arrange for an assessment to be conducted of any person who is under the age of 25 where it appears that they may have learning difficulties and where they are receiving, or likely to receive, post-16 education or training or higher education. This is to enable assessments to be made where young people continuing in post-16 education or training have learning difficulties or disabilities but do not have a statement, or develop learning difficulties shortly before or after leaving school and thus do not have a statement of SEN. The power applies in respect of people up to the age of 25 to enable assessments to apply for the duration of a course.
99. The Welsh Government exercises its functions under Section 140 (s140) by arranging for assessments to be conducted by Careers Wales companies through an annual contract.
100. Currently, learners below the age of 16 with a statement of SEN and their parents have the right to engage in dispute resolution if they feel that the statement does not accurately reflect the learner's needs or the provision detailed in it is not being met. Engaging in dispute resolution does not affect their right to then take forward an appeal to the Special Educational Needs Tribunal for Wales (SENTW) if this initial process does not achieve resolution of the complaint.

## *Background*

101. The National Assembly for Wales has considered issues and concerns in relation to the provision and planning arrangements for Post-16 learners with additional learning needs on a number of occasions, each time making the case for significant change. For example;

Part 3 of the Education, Lifelong Learning and Skills Committee Policy Review of SEN considered transition, it reported in March 2007. It highlighted concerns around transition planning, limited opportunities and lack of information about options and the need for better liaison between schools and FE institutions (FEIs). It also reported that the system was overly complex and bureaucratic and was not sufficiently learner focussed<sup>8</sup>.

102. In 2009 the Enterprise and Learning Committee considered two petitions in relation to post 19 students with additional learning needs. Amongst their findings was a statement that “there is a convincing body of evidence on the need for transition planning to happen earlier than currently appears to be the case in most instances” and a recommendation relating to the need to make and communicate decisions regarding funding far earlier than often happens<sup>9</sup>.

103. And, in 2010 a Ministerial Task and Finish Group was set up to consider options in relation to the following areas:

establishing an improved and unified system of transition to educational provision in school or FE for young people with additional learning needs above the age of 16;

achieving better value for money in expenditure on post-16 education for young people with ALN, specifically against the context of financial challenge over next 3 years;

sharing more widely expertise that is currently in special schools and FE colleges in providing for ALN post-16;  
use of out of county and out of country placements;

investment in post-16 school and FE provision for young people with ALN.

104. The group reached a general consensus very early on in discussions that the present system could not continue and that the separation of the funding and management decisions was not sustainable. Some of the key issues identified included the need for consistency of approach across Wales; to be clear on the definitions of need; to ensure that schools and FE colleges worked together in a collaborative way post-16; and to ensure there was a value for money approach

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<sup>8</sup> The report can be found at: [www.assemblywales.org/a418a2221ff4ec27fb94740522d38822.pdf](http://www.assemblywales.org/a418a2221ff4ec27fb94740522d38822.pdf)

<sup>9</sup> The report can be found at: <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=126916&ds=5/2009>

taken in the commissioning process. Ultimately it was a clear message from the group that the learner could achieve benefits if better planning of provision took place, including an increase in options available at a local level. However, it was also clear that, for a few learners, specialist residential placements will remain the right option<sup>10</sup>.

105. This Bill sets out to reform the approach taken in order to address many of the recommendations set out by the Task and Finish group and the various Committee reports before it.

### *Current Practice*

106. In the 20011/12 academic year Careers Wales carried out 1398 assessments under the current legislative arrangements.
107. Of these 85 resulted in individual applications to the Welsh Government for funding at specialist colleges. 70 (82%) of these applications did not include sufficient information to enable a funding decision to be made and further information had to be sought. 77% of applications resulted in provision that was joint funded with the Welsh Government covering the educational element of the costs, local authorities covering social care costs and/or local health boards (LHBs) covering health related costs.
108. Only 59% of applications were processed in time for a decision to be communicated to learner and parents prior to the end of July for a September course start. This was mainly due to delays in receiving full information on which to base a decision and/or the time taken to negotiate with local authority and/or LHB.
109. A further 166 of the assessments were used by FE colleges as evidence for claims for exceptional funding to make suitable provision to meet a learner's needs.
110. Of the remaining 1147 a small number may have related to learners who did not continue their education for some reason. The majority of assessments however should have followed learners to their relevant learning provider to inform their support for the learner. Support for these learners is not subject to an individualised funding application but is funded from the FE college's main recurrent funding grant or their supplementary grant funding. However, practice varies and many FE colleges do not either receive or take due notice of the assessments. Most FE colleges will carry out their own assessments and provide support based on evidence from those assessments.
111. Current practice and the role of Careers Wales as lead coordinator in the Section 140 assessment process are problematic in a number of ways, for example;

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<sup>10</sup> The report can be found at:  
<http://wales.gov.uk/topics/educationandskills/publications/reports/additionallearningreport/?lang=en>



Careers Wales are not in a position to have substantial prior knowledge of learners' needs or the provision made under the SEN Code of Practice to meet those needs. Careers advisors are not always able to attend SEN reviews in year 9 to ensure that transition planning starts early, and are not well placed to work with FE colleges to plan for meeting future needs.

The primary role of Careers Wales advisors is to provide careers advice and guidance. Their role in producing assessments under s140 has therefore relied on them coordinating advice and professional judgement from other sources. They are not in a position to make an objective comparison of options available to meet a learner's needs. Neither is it within their remit to enter into discussion with FE colleges as to what provision might be possible if support were put in place for a learner or a group of learners.

In carrying out an assessment, and in particular where that assessment may result in an individual application for funding at a specialist college, Careers Wales is largely reliant on information from the local authority, education and social care, LHB or other services about additional learning needs and what is required to meet those needs.

The provision suitable to meet the learner's needs as set out in the assessment and funding application is often a reflection of the learner or their parent's declared preference; this may or may not be based on knowledge of and proper consideration of all available options.

As the requirement is for an assessment to be made in the final year of compulsory schooling learners who stay on at school may not receive an assessment or may need to rely on an assessment made some time before they actually leave school to move to further or higher education.

112. The local authority ceases to have responsibility for assessing and meeting the needs of learners with additional learning needs once they reach 19, or leave school to go to Further or Higher Education. This is also problematic, for example;

There is little incentive for the local authority to pro actively engage in the assessment of needs or identification of provision suitable to meet them.

There is no advantage to the local authority in working with local FE colleges to plan ahead and to consider ways to extend the ability of FE to meet the needs of a greater number of learners with additional learning needs, primarily as the cost of provision suitable to meet those needs is met by Welsh Government.

113. The separation of the funding and management decisions risks provision and funding decisions being based on incomplete or inadequate evidence. This causes substantial delays, can lead to decisions based on poor evidence and does not provide assurance that value for money is being achieved. Furthermore, the current process undermines efforts to plan effectively and early and extend local provision suitable to meet learner needs.

### *When things go wrong*

114. Pupils who remain in school or their parents have the right to appeal to the SENTW where they consider that an assessment under the SEN Code of Practice should have been undertaken and has not been or where they consider that a statement does not adequately reflect the needs of the learner and the provision suitable to meet those needs.
115. No comparable right of appeal applies to assessments made under Section 140. Disputes can only be considered via an application for Judicial Review, which provides limited recourse as it can only consider the lawfulness of a decision. It is also costly and not easily accessible to learners.
116. Therefore, currently, a learner over compulsory school age has greater rights if they remain in school than if they leave and continue their education in a FE college. This might be a disincentive to leaving school when a learner's need might be better met outside of the school setting.
117. In 2012, of the 85 individual funding applications, two applicants engaged solicitors who indicated that they were preparing to seek Judicial Review. However, matters were resolved and action avoided. One other applicant submitted a formal application for judicial review. Careers Wales were also subject to threat of Judicial Review.

### *Objectives*

118. The Welsh Government's policy objective is to bring about a less complex system that better meets and protects the needs of post-16 learners with additional learning needs, whilst also delivering better value for money.
119. To achieve this, planning for transition from school needs to start earlier and be carried out by those who already know and understand the challenges the learner faces. Those responsible for assessing learner needs and identifying provision required to meet them are best placed to work with local providers, FE colleges and specialist providers, to plan ahead for future needs and develop local provision in line with future need. This local collaboration, careful consideration of all options available to meet a learner's needs, and resolving the separation of funding and management will combine to ensure value for money without a negative impact on learners.
120. The Welsh Government recognises the need to balance the drive for local management, value for money, the public interest and the need to safeguard learners. The Bill provides for a right to appeal which will provide protection for learners and help ensure consistency of services.
121. The changes made by the Bill include:

Local authorities will be placed under a duty to assess the needs of learners who have a statement of special educational needs, are in the final year of

compulsory schooling or above compulsory school age, and are expected to leave school to receive post-16 education and training during or at the end of the current academic year.

Local authorities will have the power to assess the needs of learners resident in their area who have a learning difficulty (but not necessarily a statement of special educational needs), are under the age of 25, appear to have learning difficulties and wish to receive post-16 education and training.

The assessment will result in a report setting out the educational and training needs of the learner, the post-16 education or training required to meet those needs and provision relating to that education and training required to meeting the learner's education and training needs.

Where the report identifies that a learner's needs are to be met through a specialist FE provider, or where a learner requires boarding accommodation in order to access education then the local authority will be responsible for securing that provision.

Local authorities will be under a duty to make arrangements for dispute resolution services to be available.

Where the dispute resolution does not reach a satisfactory outcome or a learner does not want to use the dispute resolution service then there will be a new right to appeal to the Special Educational Needs Tribunal for Wales (SENTW). Following a hearing the SENTW will be able to order a local authority to make an assessment, amend the assessment report; or make arrangements for a further assessment to be carried out.

Welsh Government will be under a duty to issue a code of practice to which local authorities must have regard in their assessment of learner needs and securing post-16 education and training for those with learning difficulties and/or disabilities.

122. A local authority will not be responsible for securing provision where the report resulting from an assessment determines that a learner's educational and training needs can be secured in a FE college, including where a learner requires additional or specialist support to meet their educational and training needs. The Welsh Ministers will remain under a duty to secure proper and reasonable facilities for education and training for learners, having regard to the needs of learners with learning difficulties.
123. Welsh Ministers will continue to fund FE colleges to assist them in meeting the additional costs associated with ensuring access for learners with learning difficulties and/or disabilities.

Risk/hazards if the legislation is not made

124. If legislation is not made then the Welsh Government would have to seek alternative ways to improve the current process and arrangements, but it would

be unable to resolve the fundamental issue of separation of management and securing educational and training provision.

125. The Welsh Government would also need to seek alternative ways to ensure that transition was well managed for learners and that local provision for learners with additional learning needs was extended and well planned.
126. The process would remain complex and bureaucratic and decisions on funding applications would continue to be made very late. There would also be a continuing risk of decisions being delayed due to insufficient evidence being available. This would not provide assurance that value for money was being delivered.
127. Without legislation learners who leave school before 19 will continue to have fewer rights than their counterparts who remain in school. Further, local authorities may find themselves facing applications for Judicial Review in the absence of dispute resolution services and a right of appeal for post-16 learners with additional learning needs will also help ensure consistency between local authorities.

How the legislation will improve the process

128. The management of the process of assessment and securing provision will no longer be separated for Post-16 learners with the most severe and complex needs. The local authority currently manages the process of assessment and provision of support for pupils under the SEN Code of Practice for Wales. Under the new arrangements local authorities will have functions to assess the needs of learners that will continue beyond the end of compulsory schooling or age 19. This continuity will support better transition planning as those already familiar with the learners and their needs can support the assessment of needs and provision required to meet them.
129. The local authority is better placed to ensure joined up working between education and social care teams and will have closer links with local health boards and other local providers of care and support.
130. As learners will generally be known to the local authority from an early age the local authority will be well placed to work with local providers to map future needs to ensure that services can change to meet future demand.
131. The new right to appeal to SENTW will be far more effective in protecting the rights of learners than Judicial Review. This will bring the rights of learners aged 16 to 25 more closely in line with younger learners and remove the current inequality for some learners depending on where they receive their education.
132. The closer alignment of process for learner's post-16 to that for pupils in schools will pave the way for wider reforms of ALN legislation currently being considered and promote a more person centred approach to meeting the needs of these learners.

## School Term Dates

133. School term dates, and therefore school holidays, vary across Wales. This lack of harmonisation of school term dates often means that families face extra child care bills as a result of siblings attending different schools which have differing school holidays (e.g. a younger child in a voluntary controlled infant school, and an older child in a voluntary aided “faith” school). Similarly, families with parents who work in schools with different holidays to those schools attended by their children may also face such additional child care costs. The changes to how school term dates are set will enable harmonisation of term dates for all maintained schools in Wales to be achieved, thus bringing savings for families who would otherwise have faced additional child care costs.

### *Current Legislative Arrangements*

134. The local authorities set school term dates for community, community special, voluntary controlled and nursery schools, while governing bodies do the same for voluntary aided and foundation schools. This is due to the provisions of section 32 of the Education Act 2002.

135. The current law does not:

place a responsibility on local authorities or the governing bodies of voluntary aided and foundation schools to work together to harmonise term dates across Wales; or

allow the Welsh Ministers to exercise control over, or intervene in, the setting of term dates.

136. There has recently been a marked increase in correspondence to the Welsh Government regarding the different term dates set by local authorities and the problems this inevitably causes for families, including incurring additional child care costs. However, correspondence received by the Welsh Government has revealed that inconsistencies with term dates are not limited to across local authority boundaries. There is sometimes an issue with term dates set by the governing bodies of voluntary aided and foundation schools, which can differ around religious festivals such as Easter. For example, faith schools will usually be open during Holy week and will take Good Friday and the following two weeks as Easter holidays.

137. Some local authorities will set the same term dates as voluntary aided faith schools for their community and voluntary controlled schools, so that parents do not face childcare difficulties. However, other local authorities will choose to have Holy Week and the following week off for the Easter holidays. If parents work in the community or voluntary controlled schools in these local authorities but their children go to a voluntary aided or foundation school (or vice versa), then the Easter holiday dates may cause childcare difficulties for those families.

138. There have been various attempts to persuade local authorities to work together to achieve harmonisation of school term dates. However, even when

challenged by the Welsh Local Government Association, local authorities have failed to reach agreement on term dates.

139. It is envisaged that the move to local authorities working in four regional “consortia” may help to ease the problem of variations in school term dates. However, there are no guarantees that this will happen, and as term and holiday dates are set up to 5 years in advance there may not be immediate agreement on harmonisation of dates. Also, whilst consortia working may promote harmonisation of term dates within local authority consortia areas, there is no guarantee that term dates between the different consortia areas will be harmonised.
140. Even if harmonisation of term dates between local authorities is agreed, the governing bodies of voluntary aided and foundation schools could still choose to set term dates which did not match with those of the local authorities. This would mean that complete harmonisation of school term dates within Wales would not happen, and some families with children at voluntary aided or foundation schools might still face childcare difficulties.
141. Therefore, at present harmonisation of school term dates across Wales cannot be ensured. The aim of the Bill is to enable harmonisation of term dates for all maintained schools in Wales, with variations occurring very occasionally and only where they can be fully justified. If such legislation is not brought forward, it is envisaged that harmonisation of term dates will not be achieved, and many families will continue to suffer as a result of needing to find and fund additional childcare.
142. The preferred way to achieve harmonisation of term dates is for the bodies which are responsible for setting term dates to work together to agree harmonised term dates amongst themselves. Therefore, the Bill retains the current position whereby local authorities set school term dates for community, community special, voluntary controlled and nursery schools, while governing bodies do the same for voluntary aided and foundation schools.
143. However, the Bill goes further by placing a responsibility on all local authorities and the governing bodies of voluntary aided and foundation schools in Wales to work together to co-operate and coordinate with each other to ensure harmonisation of term dates. This will require those bodies to take all reasonable steps to reach agreement regarding term dates, to ensure harmonisation of school term dates for each school year.
144. This works by:

placing a responsibility on each local authority to co-operate and co-ordinate to reach agreement on term dates with all other local authorities in Wales; and;

placing a responsibility on each local authority and the governing bodies of all foundation and voluntary aided schools situated within that local authority

area to co-operate and co-ordinate with each other to reach agreement on term dates.

145. The Welsh Government recognises that local authorities and relevant school governing bodies may be unable to reach consensus on term dates, despite their best efforts to do so. Therefore, the Welsh Ministers are given a discretionary power in the Bill to allow them to direct local authorities and relevant governing bodies regarding the setting of school term dates. This will enable the Welsh Ministers to intervene in the setting of term dates by allowing them to tell local authorities and the governing bodies of voluntary aided and foundation schools what their school term dates must be, should the Welsh Ministers believe that this is necessary.
146. The power given to the Welsh Ministers to direct local authorities and relevant governing bodies is not limited to cases where harmonisation of dates is not agreed, but can be exercised even where harmonisation of term dates has been achieved. This is because there may be circumstances where the Welsh Ministers have reason to believe that the dates agreed by all local authorities and governing bodies need amending, perhaps to make sure that school terms are as equal in length as possible. For example, a particularly early Easter may mean that the Welsh Ministers prefer the Easter break to be for the two weeks following Good Friday, so that a very long summer term can be avoided.
147. In addition, the Welsh Ministers are able to use their powers to direct that varying term dates are set for different types of school or local authority areas (or parts of local authority areas). This is because occasionally there may be good reason for such variation of term dates in a particular year. For example, an event such as the Ryder Cup could mean that different school holidays are a sensible way forward for schools in a specific area.
148. Therefore, the Welsh Ministers' power to direct local authorities and relevant governing bodies on the setting of term dates is:
- not limited to cases where local authorities and governing bodies do not agree on term dates; and
- allows Welsh Ministers to be able to use their powers to direct that different term dates are set for different types of school or different local authority areas (or parts of local authority areas).
149. In order for the Welsh Ministers to be in a position to begin to consider whether to exercise their discretionary powers to issue directions on term dates, it is necessary that they are informed well in advance by local authorities and relevant governing bodies of the dates which these bodies have agreed between themselves. By extension, it will also be useful if the Welsh Ministers are informed of term dates which have been set by local authorities and relevant governing bodies even if it has not been possible to agree these dates with all other local authorities in Wales and all relevant governing bodies within a local authority's area.

150. It is believed that the effect of this legislation will be to harmonise school term dates across Wales, with variations occurring only occasionally and where they can be fully justified. This should bring savings for families who have been facing additional child care bills as a result of siblings attending different schools which have differing school holidays (e.g. a younger child in a voluntary controlled infant school, and an older child in a voluntary aided “faith” high school).
151. Similarly, there should be savings for families with parents who work in schools with different holidays to those schools which their children attend. In the absence of this legislation, local authorities and the appropriate school governing bodies would continue to set school term dates for their schools, but there would be no legal mechanisms in place to help ensure that harmonisation of term dates would be achieved.
152. Without the responsibility to work together to achieve harmonisation of term dates being placed on these bodies coupled with the Welsh Ministers have the discretionary power to intervene in term date setting, there probably would be no harmonisation of school term dates.
153. This in turn would mean a continuation of the difficulties faced by many working families in trying to find and finance appropriate additional child care. The opportunity has also been taken to consolidate the existing provisions regarding school session times in the current section 32 of the Education Act 2002.

Appointment and removal of HM Chief Inspector and appointment of HM Inspectors of education and training in Wales under section 19 of the Education Act 2005

154. Her Majesty’s Chief Inspector (HMCI) and Her Majesty’s Inspectors (HMI) for education and training in Wales are currently appointed by Her Majesty by Order in Council on the recommendation of the Secretary of State after receiving advice from the Welsh Ministers. In practice the advisory function of the Welsh Ministers is exercised by the First Minister.
155. In July 2012 the Lord President of the Privy Council (also the Deputy Prime Minister) and the Secretary of State for Wales agreed that the responsibility for advising Her Majesty on Privy Council functions that were in the legislative competence of the National Assembly for Wales should be vested in the First Minister.
156. In a Written Ministerial Statement on 15 October 2012, the Lord President of the Privy Council confirmed the agreement that the First Minister would advise Her Majesty in respect of her functions which are within devolved areas of competence. The agreement includes the appointment of HMCI; the appointment of HMI; and the removal from office of HMCI on the ground of incapacity or misconduct under section 19(6) of the Education Act 2005 (“the 2005 Act”).
157. On 16 October 2012 the Lord President of the Privy Council, wrote to the First Minister confirming that the First Minister will advise Her Majesty on Privy



Council matters that are devolved to Wales, so long as the holder of that office is a member of the Privy Council.

158. Implementation of the agreement, in so far as it relates to HMCI and HMI will require the repeal of section 19(6) of the 2005 Act to remove the Secretary of State from the process in Wales. The Education (Wales) Bill is being used to achieve this repeal.

**Territorial extent**

159. This Bill applies in relation to Wales.

## 4. Consultation

160. The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with partners when developing legislation. In keeping with this statement the Department for Education and Skills has consulted on the individual proposals within the Bill.

### Education Workforce Council

161. The Department for Education and Skill published two consultations to assist in shaping the detail of these proposals. The first consultation was published in December 2011 for a 12-week period. The consultation set out proposals for the future of GTCW and invited comments on the proposal to widen the current requirement for teachers to register with a professional body, to cover a wider sector which would include FE teachers and learning support staff; work based learning staff; unqualified teachers, youth workers and school learning support staff.
162. The consultation was circulated across a number of key sectors using a range of networks and included publication in the DYSG newsletters. Some of the key stakeholders also held events to discuss their collective responses to the consultation. The consultation closed on 30 March 2012 and the Welsh Government response was published in August 2012.
163. The consultation document and response can be accessed at:

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

164. In total 94 written responses to the consultation were received and included amongst others Estyn, GTCW, Governors Wales, HEFCW and NAHT Wales. Responses to the consultation showed broad agreement for both the registration of the wider education workforce in Wales and the proposed Workforce Council functions.
165. The initial consultation sought views on the broad principles of the proposed body and many of the more detailed aspects of the proposals requested by those responding remained unanswered a further consultation was published. The second consultation set out more detail relating to the functions and operations of a registration body and was published for a period of 6-weeks from 10 September 2012 to 19 October 2012.
166. The Welsh Government response was published in December 2012 and can be accessed at:

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

167. The consultation invited comments on the following specific areas of the proposals:

the professions who would be required to register;

the development of a common code of conduct for the professions identified;

how the registration body would operate including its management, working groups and disciplinary processes;

how data would be collected and the intention to share it on an anonymous basis with employers to assist workforce planning;

the role of the body in ensuring that initial training and continued professional development is of the highest quality; and

a suggested range of annual fees that individuals would need to pay.

168. Again the consultation was circulated across a number of key sectors using a range of networks including publication in the DYSG newsletters. Some key stakeholders also held events to discuss their collective responses to the consultation. In total 47 written responses were received.

169. Responses were broadly supportive of the of the proposals and to ensure that coherence and clarity in what is being proposed officials have since continued to engage with relevant internal and external stakeholders including unions; GTCW; Colegau Cymru and the WLGA to name a few.

170. In line with the requirements placed upon Welsh Ministers through the Rights of Children and Young Persons (Wales) Measure 2011, A Child/Young persons version was shared with focus groups around Wales through March 2013. The first event was part of the residential agenda of Powys Youth forum in Mid Wales. It has members that represent all different groups of young people. The remaining events were held in High Schools in Monmouth, Brecon and Conwy/Wrexham.

171. The Welsh Government has considered the various responses in relation to registration fees and these comments will form part of the consideration for any fees payable set out in regulations. Further consultation on these regulations will take place early 2014.

172. The list of consultees for both consultations included all bodies involved in the education field including employment agencies, local authorities, youth and play workers, education training providers and awarding bodies.

## Reform of the registration and approval of independent schools in respect of special educational needs

173. The Department for Education and Skills published a consultation on '*Reform of the registration and approval of Independent Schools in respect of special educational needs*' on 20<sup>th</sup> September 2012. The consultation took place over a six week period and ended on the 1<sup>st</sup> November 2012, the Welsh Government published a summary of consultation responses in June 2013.

174. The consultation document and response can be accessed at:

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

175. In line with the requirements placed upon Welsh Ministers under the Rights of Children and Young Persons (Wales) Measure 2011 the Welsh Government also issued a young persons' version.

176. The consultation invited comments on the proposal to repeal section 347, in view of the existing provisions under section 160, and on proposed measures to be put in place to support this legislative change.

177. The majority of those responding to the six questions posed in the consultation were in agreement with the proposals.

## Giving the responsibility for assessing the need for and arranging post-16 education for learners with learning difficulties and/or disabilities to local authorities

178. The Department for Education and Skills published its consultation on '*Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs*' on 26<sup>th</sup> June 2012. The consultation took place over a 12 week period and ended on 19<sup>th</sup> October 2012.

179. The consultation document and response can be accessed at:

<http://wales.gov.uk/consultations/education/senframeworkconsultation/;jsessionid=6543F8E57153111112D294B449226E6C?status=closed&lang=en>

180. The consultation proposed a range of reforms to the legislative framework for children with additional learning needs (ALN). Chapter 10 outlined proposals relating to post-16 education for learners with learning difficulties and/or disabilities.

181. During the consultation period the Welsh Government organised three consultation events across Wales, two in Cardiff and one in Llandudno. Over 300 people attended these meetings. In addition, SNAP Cymru and Children in

Wales held ‘family focus’ events across Wales with children, young people and their wider families to gather their views on the proposals.

182. In line with the requirements placed upon Welsh Ministers under the Rights of Children and Young Persons (Wales) Measure 2011 the Welsh Government also issued a young persons’ version of the wider consultation.
183. The consultation invited comments on a broad spectrum of ALN reform but also directly sought responses on changes proposed for post-16 specialist placements. The total number of responses to the consultation was 206.
184. The Welsh Government published the summary of responses in June 2013. Responses were received from, amongst others local authorities, health boards, teachers and lecturers, medical professionals, FE colleges, Careers Wales, representatives of voluntary sector organisations and members of the general public.
185. Half of respondents agreed that responsibility for assessing the need for and arranging post-16 education for learners with learning difficulties and/or disabilities should transfer to local authorities. A small proportion disagreed and over a third neither agreed nor disagreed.
186. Where concerns were raised the majority of them related to the quantum of funding that will be transferred to local authorities to support their new functions. The Welsh Government has an agreed approach to negotiating transfers to the Revenue Support Grant via the Distribution Subgroup; this group will be asked to consider the transfer of funding to RSG in relation to these new arrangements ahead of implementation.

#### School Term Dates

187. The consultation on reforming the way in which school term dates are set for all maintained schools in Wales was published by the Department for Education and Skills on 3<sup>rd</sup> September 2012. The consultation took place over a twelve week period and ended on the 26<sup>th</sup> November 2012. The Welsh Government’s response to the consultation was published on 16<sup>th</sup> April 2013.
188. The consultation document and response can be accessed at:  
  
<http://wales.gov.uk/consultations/education/schooltermdates/?status=closed&lang=en>
189. The consultation was circulated across a number of key sectors using a range of networks and included publication in the DYSG newsletters. In line with the requirements placed upon Welsh Ministers through the Rights of Children and Young Persons (Wales) Measure 2011 the Welsh Government also issued a children’s and young people’s version.
190. The consultation invited comments on proposed changes to the way in which school term dates are set in Wales and whether such proposals would have an

impact in terms of equality and diversity. The total number of responses to the consultation was 55.

191. Responses were received from, amongst others, the WLGA/ADEW, local authorities and consortia, teachers' unions, Catholic Education Service, Governors Wales, representatives of voluntary aided and foundation schools and members of the general public. Two responses were received to the children and young people's questionnaire.
192. There was broad agreement to each of the proposals set out in the consultation responders expressed the difficulties faced by families in finding and financing the additional childcare required when term dates are not harmonised.
193. Some concerns were raised by responders in relation to whether specific days such as holy week up to and including Maundy Thursday should always be during term time. Some concerns were also raised over the principle of Welsh Ministers' ability to set term dates. However, a majority of all respondents who provided a response to the proposals responded with agree or neither agree/disagree.
194. In the light of some of the consultation responses, the Welsh Government considered afresh the proposals for harmonisation of school term dates. The concerns and contrary views expressed by some respondents notwithstanding, it was concluded that the advantages of the proposals outweighed the disadvantages.

The appointment and removal of HM Chief Inspector and appointment of HM Inspectors of education and training in Wales under section 19 of the Education Act 2005.

195. The repeal of section 19(6) of the Education Act 2005 is a technical change and as such no general consultation has been carried out. However, the Secretary of State for Wales and the Deputy Prime Minister in his capacity as the Lord President of the Privy Council have been consulted and are content with the proposals. The Welsh Government has consulted with HM Chief Inspector for Education and Training in Wales who is also content with the proposals.

## 5. Power to make subordinate legislation

196. The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

the person upon whom, or the body upon which, the power is conferred;

the form in which the power is to be exercised;

the appropriateness of the delegated power; and

the applied procedure (*affirmative, negative, no procedure*), if any, together with the reasons why it is considered appropriate;

Section :	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
5(1) Power to add functions	Welsh Ministers	Order	The main functions of the Council are set out on the face of the Bill. With the development of policies such as 14-19 learning pathways and the transformational vocational curriculum there will need to be flexibility to meet the changing needs of the education workforce both now and in the future.	Negative	The main duties are set out on the face of the Bill and use of the negative procedure will allow flexibility. Any changes made by regulation will take into account the views of appropriate bodies following the consultation.
10(2)(b) Eligibility for registration	Welsh Ministers	Regulation	The eligibility for registration is set out on the face of the Bill. Regulations under this power will only set out matters relating to provisional registration	Negative	There will need to be flexibility to allow a system of provisional registration to meet future policy aspirations and the changing needs of the education workforce both now and in the future. The detail is technical.

Section :	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
10(6) Eligibility for registration	Welsh Ministers	Order	<p>The conditions when a person is not eligible to register with the Council are set out on the face of the Bill. Over time, there could well be a need to allow for changes to the second of these conditions to specify additional grounds of ineligibility that may be necessary for the wider education workforce.</p> <p>Flexibility is needed to ensure that additional requirements may be added to the second condition as required.</p>	Affirmative	It is considered appropriate that changes made to primary legislation are approved in plenary.
12(1) Registration fees	Welsh Ministers	Regulations	<p>Regulations will provide the details of the fee which may be payable in relation to registration and the mechanism for charging and collecting the fee.</p> <p>S.12 of the 1998 Act currently provides a regulation making power in relation to fees.</p>	Negative	The detail is technical and administrative and there needs to be flexibility to easily change fees.
13(1) Registration: further provision	Welsh Ministers	Regulations	<p>Provides the flexibility to allow for further changes to be made about the register and registration in response to evidence based need.</p> <p>s.4 of the 1998 Act currently provides a similar regulation</p>	Negative	The detail is technical and administrative in relation to the composition of the register and the manner in which applicants need to apply.



Section :	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			making power relating to teachers registration		
14(1) <i>Requirements to be satisfied to provide services – school teachers and school learning support workers</i>	Welsh Ministers	Regulations	<p>The power setting out the education practitioner who will be required to register is on the face of the Bill. Regulations will provide some of the detail of those conditions, and the services which cannot be provided unless those conditions are met, and allow for the conditions and services to be altered when required in response to evidence based need.</p> <p>In relation to teachers an equivalent principle exists as a result of the requirement to register in s.3 of the Teaching and Higher Education Act 1998 combined with regulations made under s.132 of the 2002 Education Act.</p>	Negative	The detail is technical regarding the qualifications, conditions and training that is required
15(1) <i>Requirements to be satisfied to provide services – Further education</i>	Welsh Ministers	Regulations	The power setting out the education practitioner who will be required to register is on the face of the Bill. Regulations will provide some of the detail of conditions to be complied with and the services which cannot be provided unless	Negative	The detail is technical and specific to the education worker in question.

Section :	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
<i>teachers</i>			<p>those conditions are met, and allow for the conditions and services to be altered when required in response to evidence based need.</p> <p>This is a new topic as FE education teachers were not required to register under the 1998 Act.</p>		
16(1) <i>Requirements to be satisfied to provide services – Further education learning support workers</i>	Welsh Ministers	Regulations	<p>Regulations will provide some of the detail of those conditions, and the services which cannot be provided unless those conditions are met, and allow for the conditions and services to be altered when required in response to evidence based need.</p> <p>FE learning support workers were not required to register under the 1998 Act.</p>	Negative	The detail is technical and specific to the education worker in question.
17(1) Requirement to undertake a period of induction	Welsh Ministers	Regulations	<p>Regulations make provision for the system of induction for the wider education workforce.</p> <p>S.19 of the 1998 Act provides a power to make regulations in relation to teachers induction.</p>	Negative	The detail is of a technical nature.

19(3) Appeals against induction decisions	Welsh Ministers	Regulations	<p>The right to appeal against induction decisions is set out on the face of the Bill. Regulations under this power will allow for further provisions about appeals to be made if necessary for the wider education workforce.</p> <p>S.19(4) of the 1998 Act currently provides that regulations must provide that teachers have a right of appeal.</p>	Negative	The nature of the regulations will be technical and procedural.
23(1) Appraisal of registered persons	Welsh Ministers	Regulations	<p>These regulations make provision for the system of appraisal of performance of registered persons. Duties may be imposed on persons listed in the bill. There needs to be flexibility in order for us to make changes to the appraisal system to meet the changing needs of the education workforce both now and in the future in response to an evidence basis. Before making regulations the Welsh Government will consult relevant bodies.</p> <p>A similar regulation making power exists in respect of school teacher's appraisal in s.131 of the Education Act 2002.</p>	Negative	The detail is technical, and needs to accommodate potential new groups of workers in the future.

25(1) Code of conduct and practice: further provision	Welsh Ministers	Regulations	<p>The Bill imposes a duty on the Welsh Ministers to prepare and publish a code and thereafter a duty of the Council to review and, if appropriate, prepare and publish subsequent codes. It is appropriate that the details about the form and content of the code is set out in sub legislation. Regulations provide the required flexibility to implement Welsh Government policies to standardise arrangements for the wider education workforce.</p> <p>S.4 of the 1998 Act currently provides a regulation making power for a code of practice for registered teachers.</p>	Negative	The detail is technical, and there is a requirement for the code to be reviewed every three years.
26(6)	Welsh Minister	Regulations	<p>This regulation-making power enables the Welsh Ministers to exclude or restrict any of the Council's disciplinary functions in section 26. This gives flexibility to tailor the Council's disciplinary powers if required, including in order taking into account the powers exercisable by the Disclosure and Barring service under the Safeguarding of Vulnerable groups Act 2006.</p> <p>Schedule 2, paragraph 6 to the 1998 Act provides a similar power</p>	Negative	This will allow the disciplinary functions of the council to quickly take into account/reflect powers exercisable under the 2006 Act.

			to make regulations in respect of teachers.		
28(1) Disciplinary functions: further provision	Welsh Minister	Regulations	<p>The Bill gives the council disciplinary functions. Regulations only provide for further provisions to be made in relation to the Councils disciplinary functions.</p> <p>Various provisions in schedule 2 to the Teaching and Higher Education Act 1998 provide regulation making powers dealing with disciplinary functions.</p>	Negative	The detail is technical regarding the form and content of procedure for investigations and disciplinary orders.
28(4)	Welsh Ministers	Regulations	<p>This regulation-making power will enable the Welsh Ministers to provide that a prohibition order against a teacher in England will have the same effect in Wales. Modifications of the Bill may be needed as a consequence. If this was the case then the procedure for the regulations would be affirmative.</p> <p>Schedule 2 paragraph 7(2) to the 1998 Act currently contains a similar regulation making power.</p>	Affirmative	Where changes are made to the Act the safeguard of the affirmative procedure will be in place.
33(1) Council to maintain	Welsh Minister	Regulations	The duty of the Council to hold information about a registered person is set out on the face of the	Negative	The detail is technical/procedural and not likely to be controversial.

records about certain persons			<p>Bill. Regulations set out the detail of the records.</p> <p>Section 4 of the Teaching and Higher and Further Education Act 1998 contains regulation making powers regarding the information to be kept about teachers on the register.</p>		
35(4) Supply of information: the Council	Welsh Minister	Regulations	<p>The Bill sets out the requirement for the Council to supply information. Regulations will set out additional requirements for providing information giving flexibility to meet future policy aspirations and the changing needs of the education workforce both now and in the future.</p> <p>S.14 of the 1998 Act contains a similar provision in relation to teachers.</p>	Negative	The detail is technical/procedural and not likely to be controversial.
36(2)	Welsh Ministers	Regulations	<p>This imposes a duty for a relevant employer to provide information to the Council about a registered person where they are no longer employed due to unprofessional conduct, incompetence or conviction of a relevant offence. Regulations will specify the information required. Over time</p>	Negative	The detail is technical.

			<p>these may need to change as further categories of workers are added.</p> <p>s.15 of the 1998 Act contains a similar provision in relation to teachers.</p>		
37(2) Supply of information: agents and contractors	Welsh Minister	Regulations	<p>This imposes a duty on agents and contractors to supply information as set out in regulations.</p> <p>s.15A of the 1998 Act contains a similar provision</p>	Negative	The detail is technical/procedural and not likely to be controversial.
Schedule 1 3(1) Membership of Council	Welsh Minister	Order	<p>This will provide the numbers of the membership to the Council. Membership will need to reflect growing size of the registered workforce. This provides flexibility to allow for any changes to the wider education workforce required to register.</p> <p>A similar provision in exists in schedule 1, paragraph 3 to the 1998 Act in relation to the current GTCW.</p>	Affirmative	This provides flexibility to allow for any changes to the wider education workforce required to register.
Schedule 1 4(1)	Welsh Ministers	Regulations	<p>This sets out detail about eligibility for, and the process of appointment to the Council.</p> <p>A similar provision in exists in schedule 1, paragraph 4 of the</p>	Negative	As additional education practitioners are required to register in the future this provides flexibility to meet the changing needs of the education workforce.

			1998 Act in relation to the current GTCW.		
Schedule 1 9(2) Chief Officer and other staff	Welsh Ministers	Regulations	The Welsh Ministers are given a regulation making power to make provision about the appointment/terms and conditions of the chief officer. This is appropriate to enable the Welsh Ministers to have oversight over such an appointment/terms and conditions (particularly at times of financial constraints) but also to have the agility to be able to adapt and implement any changes that might be necessary.	Negative	Regulations provide detail about the appointment process and how the terms and conditions of appointment are to be determined.
Schedule 2 paragraph 2  Changing the categories of registered worker			This provides the power to add, amend or remove a category of registration or the descriptions of a category. It can deal with the need to be in possession of a specified qualification or experience of a specified kind. A consultation with appropriate persons is to take place.	Affirmative	As an order under this paragraph may modify this or another enactment there is a need to the affirmative procedure to be adopted.
Section 44: (New section 40B(5) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	Regulation-making power will allow Ministers to set out when a learner is/is not to be treated as being ordinarily resident in a local authority area.	Negative	Regulations will allow for changing criteria to be included when required when assessing residency.



Section 44: (New section 40C(5) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	Sets out how an assessment is to be carried out; how the report of the assessment is to be completed by the local authority and what information is to be included or attached to the report.	Negative	The Regulations will allow for consistency between areas in the preparation of the report.
Section 44: (New section 40D (1) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	Sets out the duty on the LA to carry out a mandatory assessment and the power to carry out an assessment set out on the face of the Bill.	Negative	The Regulations give the WM the power to set out how a learner would request a mandatory assessment or a discretionary assessment
Section 44: (New section 40I (2) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	The duty on the LA to comply with the orders of the Welsh Tribunal are set out on the face of the Bill.	Negative	Regulations specify time period which the LA must comply.
Section 44: (New section 40J (5) of the of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	Sets out the period within with LA must secure an assessment of a learner where it decides not to oppose an appeal to SENTW.	Negative	Regulations specify time period which the LA must comply.
Section 44: (New section 40K(2) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	The ability of a learner to appeal to SENTW is set out on the face of the Bill.	Negative	The regulatory-making power will allow Ministers to determine the detailed procedure for making appeals.

Section 44: (New section 40N(1) and (5) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	The ability of a learner to have a case friend during an appeal is set out on the face of the Bill.	Negative	The regulatory-making power will allow Ministers to determine the detailed procedure for appointing case friends.
Section 44: (New section 40 O (4) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	The duty on Las to provide an independent advocacy services to persons making, intending to or considering making an appeal to SENTW or taking part or considering taking part in dispute resolution arrangements.	Negative	Regulations specify requirements which the LA must comply.
Section 44: (New section 41A(4)(a) and (b) (5) and (6) of the Learning & Skills Act 2000)	Welsh Ministers	Regulation	The duty on a LA to provide education/training as set out in an assessment report is set out on the face of the Bill.	Negative	Regulations will determine the limits of a LA duty in respect of learners leaving a LA area; failing to cooperate with an assessment etc.
Section 49 (New section 32A(6) of the Education Act 2002)	Welsh Ministers	Regulations	Sets and amends the detail of how the main duty on local authorities to inform the Welsh Ministers of term dates in their area is to be affected.	Negative procedure	These Regulations will set and allow amendment of the detail of the notification, time period, form, content and procedure. This detail is technical regarding the notification process, and is unlikely to be controversial.

Section 49 (New section 32B(4) of the Education Act 2002)	Welsh Ministers	Regulations	Sets and amends the detail of the consultation to be prescribed and adapted over time, as necessary.	Negative procedure	These Regulations will set and allow amendment to the requirements of consultation process. The detail is technical and is unlikely to be controversial.
Section 49 (New section 32C(5) of the Education Act 2002)	Welsh Ministers	Regulation	Consolidates existing regulation-making powers in section 32(3) and (9) of the Education Act 2002. Details the procedure to be followed by either a local authority or the governing body of a community, voluntary controlled/community special or nursery school when making changes to school session times.	Negative	This is a consolidation of existing powers. The Changing of Schools Session Times (Wales) Regulations 2009 as amended, have been made under the existing powers, and will continue in force.
Section 52	Welsh Ministers	Order	Suitable for an order as provision relates to making potential consequential amendments to this and other primary legislation. Whilst the principles are set out on the face of the Act, and it will be necessary to amend several other Acts it is not practical to identify every consequential amendment at this stage	Affirmative	The affirmative resolution procedure applies as the Order will amend this Act and may include supplementary amendments to other primary legislation.

## **6. Regulatory Impact Assessment (RIA)**

197. A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill and follows at Section 7.

198. A cost benefit assessment is included at Section 8.

## 7. Options

### Education Workforce Council

#### Impact and costs of the Education (Wales) Bill

199. This Regulatory Impact Assessment presents options in relation to each provision within the Bill. Each option is analysed in terms of how far it would achieve the Welsh Government's objectives, along with the associated risks, costs and benefits.

#### **Option 1: Do nothing - Maintain registration in the same format as it is currently**

200. Consideration was given to maintaining the status quo. The GTCW was established by the Teaching and Higher Education Act 1998. The GTCW came into being on 1 September 2000. Subsequently, the 1998 Act was amended by the Education Act 2002 as a result of which, the GTCW was given additional responsibilities.

201. The GTCW's principal aims are:

To contribute to improving the standards of teaching and the quality of learning; and

To maintain and improve standards of professional conduct amongst teachers.

202. The GTCW's functions when they were established in September 2000 were to:

establish and maintain a Register of Qualified Teachers in Wales;

provide a Professional Code for registered teachers;

carry out disciplinary functions relating to teachers accused of serious professional misconduct and incompetence;

advise the Welsh Government and other designated bodies on:

- standards of teaching;
- standards of conduct for teachers;
- the role of the teaching profession;
- the training, career development and performance management of teachers;
- recruitment to the teaching profession;
- the supply of teachers;
- the retention of teachers within the profession;
- the standing of the teaching profession;
- medical fitness to teach;

and if requested by the Welsh Government, on any other matters relating to teaching.

203. At the request of the Welsh Government, the GTCW may also undertake activities designed to promote recruitment to the teaching profession and the continuing professional development of teachers.

204. The education workforce in Wales has changed significantly in the last ten years. Options available to learners in Wales through collaboration between schools and post 16 providers have led to much closer working of practitioners between different sectors. Reforms such as the foundation phase and 14-19 Learning Pathways require learning support staff, teachers and post 16 teachers, trainers and lecturers to collaborate in supporting learners more effectively. It is clear that more needs to be done than just maintaining the status quo.

205. Advantages:

No disruption to the existing registration system.

No additional costs.

The current GTCW has a good record for regulating and maintaining standards for teachers.

206. Disadvantages:

FE lecturers and support staff, work based learning tutors, youth workers and school based support staff would remain unregistered; this would not be seen to be consistent with the policies such as 14-19 Learning Pathways, collaboration between schools and post 16 providers and the Foundation Phase with learning support assistants working in partnership with teachers to deliver the curriculum.

Does not deliver on The Programme for Government.

This would not provide coherence and recognition cross the wider education workforce.

It would not address issues of raising the status and profile of those working in the education sector.

The wider education workforce would continue to operate without a suite of professional standards and without a framework for induction and appraisal.

This would not help to raise standards across the education workforce.

**Option 2: (Do minimum) - Register school based education practitioners**

207. Consideration was given to registering those practitioners working in the school based sector only that is teachers and school learning support workers staff,

maintaining the same principal aims and functions for the existing GTCW for the reasons highlighted below.

208. Currently there are considerable differences between the requirements for the wider education workforce in terms of:

- professional standards;
- qualifications;
- initial training;
- performance management; and
- continuing professional development.

209. While some of these differences are entirely appropriate, reflecting real differences in sector requirements, others are more artificial, creating barriers to cooperation and mobility among the workforce. Requiring school teachers and school learning support workers to register would only go some of the way to addressing these issues. A system of registration for only school based practitioners would not lend it self to the reforms such as 14-19 learning pathways where the Welsh Government is seeing more collaboration between school based learning support workers, teachers and post 16 teachers, trainers and lecturers in supporting learners more effectively.

210. It was clear from the first consultation that this option would not go far enough to improve standards across the education workforce.

211. Advantages:

This would register everyone that works within schools in one professional body, creating a consistent approach to regulating all those that work within a school.

This would show coherence in the treatment of educational practitioners in terms of competency and conduct.

The inclusion of all school based learning support workers would be seen as a positive step forward for unions if the costs to members were kept down and the advantages of registration were made clear.

212. Disadvantages:

FE lecturers and FE support staff, work based learning tutors, and youth workers would remain unregistered; this would not be seen to be consistent with the policies such as 14-19 Learning Pathways, collaboration between schools and post 16 providers and the Foundation Phase with learning support assistants working in partnership with teachers to deliver the curriculum.

This would not provide coherence and recognition across the wider education workforce.

It would not address issues of raising the status and profile of those working in the wider education workforce.

It would only go some way to improving standards of the education workforce.

### **Option 3 – Registering those working in the education workforce in Wales (Preferred Option)**

213. Consideration was also given to registering the wider education workforce in Wales. This would include registering:

Teachers

School based learning support workers

FE teachers and learning support workers

Work based learning tutors

Youth workers

214. In considering this option the Welsh Government also wished to consider expanding the scope of the body so that it does more than simply keep a register. While the core principals would remain the same the core functions would be broader to capture the requirements of the wider education workforce.

215. The options available to learners in Wales through policies such as 14-19 Learning Pathways and collaboration between schools and post 16 providers have led to closer working of practitioners between different sectors. There has also been a rapid increase in the number of people supporting teaching and learning in the Foundation Phase with learning support assistants working in partnership with teachers to deliver the curriculum. This means that the structure and composition of the education workforce has changed rapidly in recent years.

216. It is vital that all these different practitioners work together effectively and are able to access well designed qualifications, support and development. Their professionalism, suitability and standards of conduct, training and development are key to their success. The Welsh Government wishes to recognise the role of all those working to support teaching and learning as part of a single and coherent education workforce in Wales.

217. There are a large number of professionals working in the education workforce who are currently not required to register:

- over 21,300 school support staff in (2010/11); and
- just over 8,800 direct teaching staff in the FE sector (in 2010/11).



218. In order to raise standards and narrow the current attainment gap, the Minister has made it clear that there is a need to ensure that the education workforce, from Foundation Phase through to 14-19, works together as a single coherent group of professionals working cooperatively to improve educational standards and attainment for the people of Wales.

219. A body registering the education workforce has the potential to be a key partner in delivering better coherence. It could support the improvement agenda and help to drive up standards, maintaining and enhancing public confidence in the profession. Responses to the second consultation supported this approach and it was agreed that this was the preferred option.

220. Advantages:

Robust registration system that will enhance the workforce planning, training and development and bring greater coherence and recognition of the contribution of the whole education workforce to the education of learners.

There would be a consistent approach to regulating all those working in the wider education workforce in Wales.

This would show more a sense of coherence and togetherness in the treatment of the wider education workforce in terms of competency and conduct.

The inclusion of FE lecturers and both school and FE based teaching and learning support staff would demonstrate the importance of their role in raising standards and enhance their status.

Registration with a professional body that sets and maintains professional standards and so retains public confidence.

It would also bring benefits of accountability, transparency and assurance of standards.

This option would be consistent with our policies such as 14-19 Learning Pathways, collaboration between schools and post 16 providers and the Foundation Phase with learning support assistants working in partnership with teachers to deliver the curriculum.

An overarching view in response to the consultation was that a carefully planned and phased registration for the wider education workforce would ensure compliance with professional standards, raising the status and profile of all those working in education. This should lead to greater a sense of coherence and togetherness between different groups of education practitioners across Wales.

An ability to plan financial expenditure more effectively to support key initiatives because exact numbers and qualifications of the registered workforce will be held centrally.

221. Disadvantages:

The wider education workforce may be required to pay a fee to register.

## Reform of the registration and approval of independent schools in respect of special educational needs

### **Option 1 - Do nothing**

222. Currently the Welsh Government receives an average of 12 enquiries from local authorities every year seeking consent to place a learner with a statement of SEN in an independent school that is not registered or approved to accept learners with SEN.
223. To gain consent to the admission of an individual pupil a local authority must write to the Welsh Government enclosing a copy of a child's statement of SEN, a recommendation for that child to be placed in an independent school and confirmation that the independent school is content to admit the pupil. The Welsh Government seeks advice from Estyn that the placement is suitable. Based on this Welsh Ministers decide whether or not to grant consent to the placement and informs the local authority of this decision. This process takes an average of 6 to 8 weeks.
224. The current process does not incur substantial costs but does involve a period of uncertainty for the learners and parents. Local authority and WG officials spend time exchanging paperwork estimated at less than 30 hours and incurring a cost of less than £500 a year.
225. Local authorities seeking to place a pupil with a statement of SEN do not have easy access to information on which independent schools are able to provide for different SEN types. Therefore, placements of children with SEN into independent schools in Wales would continue to take longer than they should.

### **Option 2 - Reform the registration and approval of independent schools in respect of special educational needs – preferred option**

226. The proposals in the Bill will simplify the process of local authority placements for children with statements of special educational need (SEN) by removing a duplication in registration requirements for statement of SEN placements, currently existing between section 347 (s347) of the Education Act 1996 (EA 1996) and section 160 (s160) of the Education Act 2002 (EA 2002). The Bill proposes to repeal s347 of EA 1996 and change the way in which independent schools register to accept learners with statements of SEN. These changes will bring all independent schools looking to provide for children with statements of SEN under the scope of the current Welsh Government agreement with HMI Estyn to undertake regular monitoring visits.
227. The Bill will amend section 160 so that, in future, independent schools wishing to admit pupils with statements of SEN will be required to register with the Welsh Government under s160. They will also be required to specify the type of SEN provision that the school will provide.

228. Local authorities in Wales seeking to place a child with a statement of SEN will be able to more quickly and easily identify those who can provide for specific SEN types and agree a suitable placement more quickly.
229. Independent schools registered under s160 as amended will also fall within the scope of the current Welsh Government agreement with HMI Estyn to undertake monitoring visits on 'approved' schools. Local authorities, parents and members of the public will also be able to access annual monitoring reports by Estyn in relation to those schools registered to admit pupils with statements SEN. This will increase transparency and accountability.
230. There is no 'Do minimum' option, in order to achieve the objectives the legislative option is the minimum intervention which has been identified.

Giving the responsibility for assessing the need for and arranging post-16 education for learners with learning difficulties and/or disabilities to local authorities

**Option 1 - Do nothing**

231. Currently Welsh Ministers are under a duty to make arrangements for the assessment of young people, under the age of 19, who have statements of special educational need, where it believes that they are likely to leave school at the end of the last year of compulsory schooling to receive post-16 education or training. The assessment must be made during the final year of compulsory education and sets out a person's educational and training needs and the provision required to meet those needs. Welsh Ministers also have the power to arrange for an assessment to be conducted of any person who is under the age of 25 where it appears that they may have learning difficulties and where they are receiving, or likely to receive, post-16 education or training or higher education.
232. The Welsh Government arranges for these assessments to be carried out by Careers Wales who produce Learning and Skills Plans for each relevant learner.
233. Some learners require specialist provision, which may include boarding accommodation, which may be provided at a specialist college. Careers Wales prepare and submit an individual application for funding in relation to these learners and their placement at a specialist college.
234. Most FE colleges offer programmes of study that can meet the needs of many learners with special educational needs. To enable them to make suitable provision for learners on these courses FE colleges may submit claims for exceptional funding or, where needs are less complex may fund necessary provision from their main recurrent funding grant or their supplementary grant funding.
235. The Welsh Government considers each individual application and the evidence supporting it in order to reach a funding decision and, where necessary seeks additional evidence and negotiates joint funding with local authority social services departments and/or health boards.

236. The Welsh Government also processes claims for exceptional funding from FE colleges and makes supplementary funding contributions to enable them to make their mainstream provision more accessible to young people with special educational needs.
237. Processing of applications for individual specialist places can take considerable time. Over 40% of applications have not received a funding decision by July each year for courses starting in September. This may be as a result of having to seek additional evidence and/or the time taken negotiating shared funding arrangements. This can cause frustration and distress for learners and their parents.
238. Currently, the right to dispute resolution and to take an appeal to the Special Educational Needs Tribunal for Wales (SENTW) does not exist for those over 16.
239. Under current arrangements transition planning for learners with more complex needs is not always effective. Local authority responsibilities for the education of young people end when they leave school so there is no incentive for authorities to plan ahead or work collaboratively with a view to meeting the ongoing needs of learners more effectively. For example they do not work with local FE colleges to plan for provision to meet the needs of learners or with social care to agree shared support arrangements early. Neither Careers Wales nor Welsh Government have prior knowledge of the learners for whom they are carrying out assessments and making funding decisions.
240. It was this that led the Ministerial Task and Finish Group, referred to above, to recommend that authorities have the responsibility for assessment and funding of specialist FE.
241. In summary, this option would maintain the current approach which does nothing to address the issues of poor and inconsistent transition planning, lack of collaboration and cooperation, need to increase local provision or to ensure there is a value for money approach taken in the commissioning process. For these reasons, option 1 is not the preferred option.

**Option 2 - Give the responsibility for assessing the need for and arranging and securing all post-16 provision for learners with Learning Difficulties and/or Disabilities (LLDD) to local authorities**

242. Under this option local authorities would be responsible for assessing the education and training needs of learners and for securing education and training to meet those needs either through specialist provision or within the FE sector.
243. Local authorities can draw on their prior knowledge of the learner to inform the assessment process and is well placed to work collaboratively with colleagues from Health and Social Care.

244. This option locates the responsibility for assessing the need for and funding all education and training needs for learners with learning difficulties and disabilities in one place. This would mean that learners are assessed in good time, transition planning with the learner and college begins earlier and local authorities would have an incentive to work with post-16 providers to ensure learners with complex needs can be catered for locally.
245. There is a risk that authorities might place undue focus on the cost of provision in making their assessment of education and training needs and provision to meet those needs. This could result in inappropriate provision being offered to some learners. This risk could be mitigated through introduction of a right of appeal if learners felt that their needs had been inappropriately assessed or that provision was not suitable to meet their needs
246. This option would be complex to manage as FE colleges currently receive funding through the supplementary grant to support them in making their courses generally more accessible and through exceptional funding in relation to specific learners. If these funding streams were to transfer to local authorities FE colleges might have to apply to several authorities for funding.
247. Under this option, learners with low levels of need would be directed to the local authority for a needs assessment which would be a time consuming and disproportionate intervention. Even low cost support or adjustments would need to be the subject of a funding application which would be burdensome and bureaucratic.
248. In summary, whilst this option would improve transition planning and collaborative working, it would increase rather than reduce bureaucracy and complexity. Further whilst on the one hand it might ensure there is a value for money approach taken in the commissioning process any savings would be offset by the cost of supporting the overly bureaucratic process. For these reasons, option 2 is not the preferred option.

**Option 3 - Give the responsibility for assessing the need for and arranging of Post-16 provision for LLDD to local authorities with responsibility for meeting costs decided with reference to a set threshold (£x).**

249. Under this option local authorities would be responsible for assessing the education and training needs of learners and for securing education and training to meet those needs either through specialist provision or within the FE sector. Where the cost of provision (other than the cost of a course already available within the FE sector) exceeded the threshold then the local authority would be responsible for meeting that cost. Where the cost of provision was below the threshold then the Welsh Government would be responsible through core or grant funding to the FE sector.
250. Local authorities can draw on their prior knowledge of the learner to inform the assessment process and is well placed to work collaboratively with colleagues from Health and Social Care.

251. This option would rely on the setting of a threshold which would determine whether the LA provided funding to the FEI to assist them in meeting the needs of an individual learner.
252. The setting of that threshold would be contentious and very complex as different FEIs currently offer different levels of support through their Supplementary and core funding. Changes in needs might push costs over or below the threshold changing responsibility for funding potentially mid course. There may be disputes between FE colleges and local authorities on the cost of provisions which could delay learners from being able to commence a course. There would be an incentive to assess needs within what could be costed at below the threshold and disputes over money might damage the very relationships between LA and FEI that the Welsh Government would seek to encourage. Finally the threshold would need to be reviewed on a regular basis.
253. In summary, whilst this option would improve transition planning and collaborative working, it would significantly increase complexity. Further it would place undue emphasis on cost, as opposed to value for money, and introduce significant scope for conflict and dispute. For these reasons, option 3 is not the preferred option.
254. Due to the fact that this option was considered unwieldy and counterproductive it was disregarded as a viable option. For this reason the Cost Benefit assessment on this Option, in Section 8 below, has not been completed.

**Option 4 - Give the responsibility for assessing the needs and securing suitable provision for Post-16 learners with LLDD to local authorities with responsibility for securing specialist provision or provision, including boarding accommodation, falling to local authorities.**

255. Welsh Ministers' general duty under sections 31 and 32 of the Learning and Skills Act 2000 to secure proper provision (for those between 16 and 19) and reasonable (for those over the age of 19) facilities for education and training for learners will remain unchanged. Ministers also have to have regard to the needs of those with learning difficulties and will therefore continue to fund FEIs to assist them in meeting the additional costs for ensuring access to course for this group of learners.
256. Under this option local authorities would be responsible for assessing the education and training needs of learners and for securing education and training to meet those needs where specialist provision is necessary.
257. Local authorities can draw on their prior knowledge of the learner to inform the assessment process and is well placed to work collaboratively with colleagues from Health and Social Care.
258. Local authorities would be encouraged to work with the FE sector to plan ahead and extend provision suitable to meet a greater range of LLDD learner needs giving learners greater choice and more local provision. Meeting more learners' needs within the FE sector would also offer better value for money.

259. There is a risk that authorities might place undue emphasis on identifying provision in the FE sector which might result in inappropriate provision being offered to some learners. This risk could be mitigated through introduction of a right of appeal if learners felt that their needs had been inappropriately assessed or that provision was not suitable to meet their needs. The report resulting from the assessment will be required to name the provider identified as being able to meet the learners' needs, an FE college could not be named unless the local authority had discussed the learners' needs and agreed that they could be met.
260. This proposal would support good transition planning, collaborative working between local authorities, including across departments within the local authority, should result in more timely funding decisions for learners and support the expansion of opportunities for LLDD learners within the FE sector.
261. In summary, this option would address the issues of poor and inconsistent transition planning, lack of collaboration and cooperation, the need to increase local provision and to ensure there is a value for money approach taken in the commissioning process without introducing undue complexity. For these reasons, option 4 is the preferred option.

### School Term Dates

#### **Option 1 - Do nothing**

262. The current law in Section 32 of the Education Act 2002 provides that local authorities set school term dates for community, community special, voluntary controlled and nursery schools, while governing bodies do the same for voluntary aided and foundation schools. This is due to the provisions of section 32 of the Education Act 2002.
263. The current law does not:
- place a responsibility on local authorities or the governing bodies of voluntary aided and foundation schools to work together to harmonise term dates across Wales; or
  - allow the Welsh Ministers to exercise control over, or intervene in, the setting of term dates.
264. It is possible that the move to consortia working between local authorities may mean that Wales-wide consensus on school term date setting is achieved. However, there is no guarantee of school term date harmonisation, as there may still be differences in term date setting between consortia areas. In addition, voluntary aided and foundation schools set their own term dates; there is no guarantee that the dates set by the governing bodies of such schools would not diverge from the dates set by local authorities.
265. In summary, this option would maintain the current approach which does nothing to address the issue of how to ensure harmonisation of school term dates across Wales. For this reason, option 1 is not the preferred option.

## **Option 2: Do minimum – Issue a non-binding Ministerial Statement**

266. A non-binding Ministerial statement could be issued to make clear the expectation that harmonisation of term dates is to be achieved for all maintained schools across Wales. The statement could clarify that if term date harmonisation was not achieved within a reasonable period of time, then the Minister would consider introducing legislation to allow the Welsh Ministers to intervene in school term date setting.
267. While use of such a statement could prove useful in persuading local authorities and the governing bodies of voluntary aided and foundation schools to work together when setting term dates, there is no guarantee that this would be achieved. Given the fact that the WLGA has attempted for several years without success to get the 22 local authorities in Wales to achieve consistency in date setting, there is a risk that a Ministerial statement would not have the desired effect.
268. In addition to the 22 local authorities, the governing bodies of voluntary aided and foundation schools would also have to agree with the dates set. There is a significant risk that such a large number of bodies would not reach agreement due to the issue of a Ministerial statement, which is non-binding.
269. For these reasons, option 2 is not the preferred option.

## **Option 3 - Introduce legislation - Place an obligation on local authorities and the governing bodies of voluntary aided and foundation schools to work together, and give the Welsh Ministers a discretionary power to intervene in term date setting**

270. Under this proposed option local authorities and the governing bodies of voluntary aided and foundation schools would be placed under an obligation to co-operate and co-ordinate with each others to try to achieve consensus on school term dates.
271. This would work by:
- placing a responsibility on each local authority to take co-operate and co-ordinate to reach agreement on term dates with all other local authorities in Wales; and
  - placing a responsibility on each local authority and the governing bodies of all foundation and voluntary aided schools situated within that local authority area to co-operate and co-ordinate with each other to reach agreement on term dates.
272. Consultation responses demonstrated that many local authorities already view consulting and working with each other and the governing bodies of voluntary aided and faith schools within their areas as an integral part of the term date setting process. Certainly, the Welsh Government is of the view that such consultation and co-operative working should already be being carried out. Therefore, placing such requirements on a statutory footing should not greatly inconvenience local authorities or such governing bodies.



273. However, the Welsh Government recognises that local authorities and relevant school governing bodies may be unable to reach consensus on term dates, despite their best efforts to do so. Therefore, the Welsh Ministers would also be given a discretionary power in the Bill to allow them to direct local authorities and the relevant governing bodies regarding the setting of school term dates. This will enable the Welsh Ministers to intervene in the setting of term dates by allowing them to tell local authorities and the governing bodies of voluntary aided and foundation schools what their school term dates must be, should the Welsh Ministers believe that this is necessary.
274. Introducing these new legislative arrangements to enable a possible “two layer” process in term date setting will allow local authorities and the governing bodies of voluntary aided and foundation schools to continue to control school term dates and the timings of school holidays, while ensuring that school term date harmonisation may be achieved. Welsh Ministers need only consider using their powers if term dates have not been agreed on a Wales-wide basis, or if the Welsh Ministers believe that the term dates which have been agreed are not suitable.
275. Before deciding to use their powers to set school term dates, the Welsh Ministers would always carry out a public consultation on the dates which they intend to set, and their reasons for doing so. It is envisaged that, where term dates have been agreed between all local authorities and relevant governing bodies, the Welsh Ministers powers to change these dates would be exercised very occasionally, and only when such intervention could be justified.
276. For parents and carers, the advantage of this option is that school term dates will be harmonised for all maintained schools in Wales, thus ending the problems which parents and carers experience in finding and funding additional child care due to diverging school term dates. It is envisaged that it would only be for exceptional circumstances (such as the Ryder Cup) that school term dates may differ in area(s) of the country.
277. For local authorities and school governing bodies, the advantage of this option is that they will continue to have control over school term date setting. It is only if they cannot agree, or agree term dates which the Welsh Ministers believe to be unsuitable, that the Welsh Ministers need consider exercising their discretionary powers.
278. For these reasons, option 3 is the preferred option.

## 8. Costs & benefits

279. This chapter contains the cost benefit analysis of the options detailed at chapter 7.

### Option 1 - Do nothing

#### Costs

280. This option maintains the status quo in which only teachers are required to register with the GTCW. There are therefore no **additional** costs associated with this option.

281. The GTCW is the independent, self regulatory professional body for teachers in Wales. GTCW was established on 1 September 2000 to maintain and enhance high standards of teaching, provide a voice for the teaching profession and advise the Welsh Government on a wide range of teaching issues. The GTCW is self-financing in respect of its core functions and raises its funds through an annual registration fee from teachers. The income generated for the year ending 31 March 2012 for the registration fee was £1,706,000.

282. Additionally, since April 2002, the Welsh Government has funded the GTCW, by way of a grant, to undertake additional work on its behalf. The funding of these activities is set out in an annual Grant Offer Letter which is issued to the GTCW before the start of each financial year. This sets out the amount of money that is to be made available to the GTCW and the terms and conditions of the grant. The Minister for Education and Skills agreed to officials issuing funding of up to £6,306,000 for 2013-14 to support the work it undertakes on behalf of the Welsh Government in relation to:

- a. The administration and confirmation of Qualified Teacher Status (QTS);
- b. Issuing Induction Certificates to registered teachers who complete their Induction successfully and hearing Induction Appeals;
- c. Administering the Induction, Early Professional Development (EPD) and Masters In Educational Practice (MEP) Programmes; and
- d. Undertaking Disclosure and Barring Service (DBS) Checks for Newly Qualified Teachers (NQTs) wishing to register with the GTCW for the first time.

#### Benefits

283. No additional benefits are anticipated by maintaining the current arrangements.

#### Risks

284. Registering the wider education workforce is required to bring about greater coherence and commonality within the education workforce, raise the status and profile of those working in the education sector, which cumulatively should affect our ability to raise standards in education. There are a large number of

professionals working in the education workforce, with over 21,300 school support staff (in 2010/11); and just over 8,800 direct teaching staff in the FE sector who would continue not to be required to register. In other sectors, the data collection has been limited and therefore makes workforce planning difficult across the sector.

285. There are considerable differences between the requirements for professional standards, qualifications, initial training, performance management and continuing professional development across the different sectors of the education workforce. Whilst some of these differences are entirely appropriate reflecting real differences in sector requirements, others are more artificial, creating barriers to co-operation and mobility amongst the workforce and limiting career development. Maintaining the current arrangements would not address these issues.
286. Maintaining the current arrangements would not recognise the role of all those working to support teaching and learning as part of a single and coherent education workforce in Wales.

## **Option 2: Do minimum – register school based education practitioners**

### **Costs**

287. The GTCW is self-financing in respect of its core functions, even with the stated intention to re-name the existing GTCW, extending and refining its functions and remit, it will still remain a self financing body in respect of its core functions and will raise its funds through an annual registration fee.
288. Currently the GTCW does not receive any funding directly from the Welsh Government towards its registration and regulation activity. However, the Government pay around £1 million through the RSG to subsidise the fee for teachers. An economic model based on salary bandings and pension increases from the 'final teacher pension scheme member contribution changes for 2012-12' is attached at Annex 2 for consideration. It should be noted that in developing this model the existing registration fee for teachers of £45 has been used as a basis for this work. **These figures are best estimates and should not be seen as the final agreed fees associated with registration for the wider education workforce.** On the other side of this equation is the structure and wider functions of the Council, which will of course have an impact on the level of fee. Work is underway to look at the existing organisation structure which will help inform work on the fee. There will be a formal consultation on the fees associated with registration which will discuss the balance between the fee levels for different groups and the extent and benefits of the wider functions the Council could perform.
289. It is anticipated that the main areas of additional costs over and above the existing GTCW expenditure are set out below. It should be noted that these costs may increase over time as with the phasing in of the requirement for the wider education workforce to register and fitness to practice cases are referred to the Council to investigate.

290. Data from the Annual Survey of Hours and Earnings (ASHE) suggests that there were approximately 14,900 teaching assistants in Wales in April 2012 who would be required to register under this option. Assuming that the registration fee remains £45 per person, this equates to additional fees of approximately £670,500. If the Welsh Government continues to contribute £33 of the £45 registration fee then there will be an additional cost of £491,700 to Welsh Government, with the teaching sector contributing the remaining £178,800. The registration fee will be used to fund the GTCW's activities. As referred to above the economic model attached at Annex 2 provides variations on the model.
291. There would be some set up costs of the Council which would be incurred before fees are being generated from the new groups. For example changes to the register database, administrative costs in registering the new groups, communication/marketing costs. These costs would be relatively small – under £100,000.
292. The budgeted cost of the GTCW disciplinary work for 2013-14 is in the region of £400,000 this is based on an average cost per case of approximately £12,000 for a disciplinary case, £1,500 for an application for registration case and £2,500 for an investigating committee. However, there is potential to make some savings to existing costs through the provisions in the Bill on removal by consent and reprimand by consent at the investigating stage.
293. It is estimated that around £2.3 million gives a fairly good indication of the core income the council will need to function once teachers and support staff are registered and disciplinary work is being carried out
294. It should be noted that these costs are based on registering all workforce at the same time. However our intention is to adopt a phased approach to registering the workforce, and it is anticipated that there will be efficiency savings and economies of scale to this model.

## **Benefits**

295. In comparison to option 1 this would enable us to achieve an element of coherence and recognition for school based education practitioners. It would provide school based teaching and learning support workers with the opportunity to enhance their status and raise standards through having consistent and relevant performance management, continuing professional development and professional standards.

## **Risks**

296. This option would not go far enough to addressing issues of coherence, recognition and status for the wider education workforce. It was clear from the first consultation that this would not go far enough to raise standards across the education workforce. There are a large number of professionals working in the education workforce, just over 8,800 direct teaching staff in the FE sector who would continue not to be required to register. In other sectors, the data collection has been limited and therefore makes workforce planning difficult across the sector.

297. There are considerable differences between the requirements for professional standards, qualifications, initial training, performance management and continuing professional development across the different sectors of the education workforce. Whilst some of these differences are entirely appropriate reflecting real differences in sector requirements, others are more artificial, creating barriers to co-operation and mobility amongst the workforce and limiting career development. This option would not address these issues.
298. This option would not recognise the role of all those working to support teaching and learning as part of a single and coherent education workforce in Wales.

**Option 3: Preferred option – Registration and regulation of the wider education workforce through reforming the existing GTCW.**

**Costs**

299. Establishing a completely new registration body would be very challenging particularly in light of the current financial pressures facing the Welsh Government. This option would therefore allow us to build on the experience of the existing GTCW, to create a reformed body with the skills and knowledge that will support the wider education workforce in Wales.
300. The GTCW is self-financing in respect of its core functions, even with the stated intention to re-name the existing GTCW, extending and refining its functions and remit, it will still remain a self financing body in respect of its core functions and will raise its funds through an annual registration fee.
301. The regulations flowing from the Bill may have an impact on the costs incurred by the Council or by the Council on behalf of the Welsh Ministers where we ask them to take on administrative functions on our behalf. The impact of any costs will be considered as the regulations that bring functions into effect are made and consulted upon.
302. Teachers have well established processes and requirements in place in relation to induction which is a statutory requirement for all newly qualified teachers. The GTCW currently receives funding in the region of £70,000 from the Welsh Government to undertake the induction appeals and certification for teachers. This option would not make changes the existing process of appeals for teachers therefore there are no additional costs associated with this. Since the establishment of the GTCW in 2000 there have been fewer than three appeals. For the wider workforce there are currently no statutory induction arrangements. The Bill gives Welsh Ministers the regulation making power to make provision about induction for the wider workforce in the future. This will enable Welsh Government to make different arrangements for the different categories of the workforce tailored to their specific needs. These proposals would be subject to formal consultation and an RIA would be produced as part of the process.
303. Welsh Ministers already have the power to promote careers in schools, but have historically arranged for this to be undertaken in partnership with the relevant organisation in England. In the future this work will be carried out on a

Wales only, more focussed basis but broaden to the wider education workforce, where economies of scale can be made. The budget for this work in Wales would be £100,000.

304. Currently the GTCW does not receive any funding directly from the Welsh Government towards its registration and regulation activity. However, the Government pays around £1 million through the RSG to subsidise the fee for teachers. An economic model based on salary bandings and pension increases from the 'final teacher pension scheme member contribution changes for 2012-12' is attached at Annex 2 for your consideration. It should be noted that in developing this model the existing registration fee for teachers of £45 is used as a basis for this work. **These figures are best estimates and should not be seen as the final agreed fees associated with registration for the wider education workforce.** On the other side of this equation is the structure and wider functions of the Council, which will of course have an impact on the level of fee. Work is underway to look at the existing organisation structure which will help inform work on the fee. There will be a formal consultation on the fees associated with registration which will discuss the balance between the fee levels for different groups and the extent and benefits of the wider functions the Council could perform.
305. It is anticipated that the main areas of additional costs over and above the existing GTCW expenditure are set out below. It should be noted that these costs may increase over time as the requirement for the wider education workforce to register and fitness to practice cases are referred to the Council to investigate are phased in.
306. There would be some set up costs of the Council which would be incurred before fees are being generated from the new groups. For example changes to the register database, administrative costs in registering the new groups, communication/marketing. These costs would be relatively small in the region of £150,000.
307. The budgeted cost of the GTCW disciplinary work for 2013-14 is in the region of £400,000 this is based on an average cost per case of approximately £12,000 for a disciplinary case, £15,000 for an application for registration case and £2,500 for an investigating committee. However, there is potential to make some savings to existing costs through the provisions in the Bill on removal by consent and reprimand by consent at the investigating stage.
308. The ASHE data for April 2012 shows approximately 72,500 people in the education workforce who would have to register under this option. Given that approximately 38,000 teachers currently register, this represents an increase of 34,500 registrations. Assuming that the registration fee remains £45 per person, this equates to additional fees of approximately £1,552,500. If the Welsh Government continues to contribute £33 of the £45 registration fee then there will be an additional cost of £1,138,500 to Welsh Government with the registered workforce contributing the remaining £414,000. The registration fee will be used to fund the GTCW's activities. As referred to above the economic model attached at Annex 2 provides variations on the model.

309. It is anticipated that the disciplinary casework will be the largest area of additional cost for the Council. Once all the new groups are registered, it is estimated that there would need to be an annual casework budget of £900,000. This represents an additional cost of £500,000 per annum. It is estimated that around £2.7 million gives a fairly good indication of the core income the new body will need to function once all of the groups are registered and disciplinary work is being carried out.
310. It should be noted that these costs are based on registering the entire workforce at the same time. However, our intention is to adopt a phased approach to registering the workforce and it is anticipated that through adopting the model of extending registration to include the wider education workforce will provide efficiency savings and economies of scale.
311. A sample of local authorities and FE colleges have been contacted in relation to the proposals. The consensus is that, given the existence of employee databases and automated payroll systems, there will be no additional cost to them for administering the payment of registration fees and any reimbursements.

## ***Benefits***

312. The preferred option would provide a robust registration system that will enhance the workforce planning, training and development and bring greater coherence and recognition of the contribution of the whole education workforce to the education of learners.
313. This option will provide a consistent approach to regulating all those working in the wider education workforce in Wales and show more parity in the treatment of the wider education workforce in terms of competency and conduct.
314. The inclusion of FE lecturers and both school and FE based teaching and learning support workers would demonstrate the importance of their role in raising standards and enhance their status.
315. Registration with a professional body that sets and maintains professional standards and so retains public confidence.
316. It would also bring benefits of accountability, transparency and assurance of standards which would be consistent with policies such as 14-19 Learning Pathways, collaboration between schools and post 16 providers, and the Foundation Phase with learning support assistants working in partnership with teachers to deliver the curriculum.
317. An overarching view in response to the consultation was that a carefully planned and phased registration for the wider education workforce would ensure compliance with professional standards, raising the status and profile of all those working in education which should lead to greater parity between different groups of education staff across Wales.

## **Risks**

318. There may be a cost associated with the requirement to register for the education practitioner. Currently teachers are already required to pay a fee of £45 to register of which £33 is subsidised through the Welsh Government RSG.

## **Preferred option**

319. In view of the evidence presented above, option 3 is presented as the preferred course of action.

320. The main reasons are:

- This provides a mechanism for registering the wider education workforce in Wales.
- Registering with a professional body that sets and maintains professional standards, and so retains public confidence is key.
- Regulations bring benefits of accountability, transparency and assurance of standards through the professions collective responsibility.
- The wider education workforce play a vital role in delivering education for learners in Wales, continuing to only register teachers looks anomalous and appears to undermine the vital part that all play within a wider education workforce.
- The wider education workforce will be able to access well designed qualifications, support and development. Their professionalism, suitability and standards of conduct, training and development are key to their success and the Education Workforce Council will provide the vehicle to drive this success.
- This provides a coherent approach across the education workforce in Wales to registration, discipline and professional development.

## Reform of the registration and approval of independent schools in respect of special educational needs

### **Option 1 - Do nothing – continue with current legislation**

## **Costs**

321. The current process does not incur substantial costs but adds an unnecessary delay to the process for placing a learner with SEN into an independent school that has not been approved under section 347 of the EA 1996 to admit that pupil. Officials from both the Welsh Government and local authorities exchange paperwork and are estimated to spend less than 30 hours doing so at a cost of less than £500. Past experience shows this takes 6 – 8 weeks.



322. Under this option neither independent schools nor Estyn would incur any additional costs.

## ***Benefits***

323. The benefits of relying on the current process are that local authorities and independent schools are familiar with this established process. The local authority has an assurance of safeguarding from WG via Estyn. Independent schools would not have to apply for a change to their existing registration with the Welsh Government.

## **Risks**

324. Under this option local authorities seeking to place pupils with special educational needs in independent schools continue to experience an overly bureaucratic system which results in unnecessary delays of 6 – 8 weeks. Also, the responsibility for securing appropriate educational provision for children with a statement of SEN would continue to be shared between the WG and local authorities rather than resting solely on local authorities which have a statutory duty to ensure appropriate educational provision.

Transitional Costs (one off): none

Average Annual Costs (excluding one-off): none

## **Option 2: Reform the registration and approval of independent schools in respect of special educational needs – preferred option**

## ***Costs***

325. Option 2 relies on independent schools being registered to admit learners with statements of SEN using the amended registration process under s160 of the Education Act 2002. The proposal will also require independent schools to specify what type of SEN they cater for when they register. The requirement to register would mean that there would be a one-off cost to Welsh Government to administer the applications for material change of use from independent schools currently approved to admit pupils under s347, estimated at a total cost of under £500.
326. The Welsh Government will produce guidance for all those involved in the new process, the cost of which is estimated at 20% of 1 FTE Band D for 4 months = £2,600. There would be no additional cost to local authorities.
327. Under this option all schools providing for children with a statement of SEN will be within the agreement with Estyn for monitoring visits. The increased monitoring regime would mean that Estyn will incur cost of carrying out an increased number of monitoring visits to schools estimated at 5 additional weeks for a full time HMI inspector earning a salary of £61,880 plus 20% on costs, meaning an estimated additional cost of £7,100. Estyn will also incur the cost of translating and making the summary of annual monitoring visits available on their website, estimated at £5,000.

328. Independent schools in Wales currently admitting individuals with a statement of SEN under the current s347 regime are subject to periodic inspection. Under option 2 these schools will be required to apply for a material change under s162 of the Education Act 2002 and be subject to annual monitoring. It would apply to an estimated 12 Independent schools in Wales. The cost of applying for a material change to their registration is estimated at 2 hours per school and the total cost for all schools is estimated at less than £500. In terms of the increased monitoring, there is estimated to be no additional cost as schools are prepared for monitoring visits at any time.

<b>Transitional Costs</b> (one off):	
Cost to Welsh Government to produce guidance and administer applications	£3,100
Cost to independent schools to register under s160 of Education Act 2002	£500

<b>Average Annual Costs</b> (excluding one-off):	
Cost to Estyn of increased annual monitoring visits	£7,100
Cost to Estyn of publishing annual monitoring reports	£5,000

## **Benefits**

329. Option 2 will result in considerable time saved in the process of placing a child with a statement of SEN into an independent school.
330. Under Option 2 independent schools will be required to register with the Welsh Ministers if they intend to admit pupils with statements of SEN and to provide information as to the type of provision that will be offered. This amendment to the registration process will mean that there will be more up to date information about the SEN provision that school has to offer in the public domain. This will assist local authorities in the process of placing a child with a SEN statement into an independent school.
331. The increased monitoring regime under this option means that more information about the school's ability to provide for SEN pupils and the standard of the education provided will be available to pupils, parents and local authorities. It will also contribute to increasing transparency and safeguarding for pupils.

## **Risks**

332. There is a risk that independent schools fail to register under the s160 regime thus limiting the ability of local authorities to secure the most suitable education for children with SEN in the shortest possible time. The Welsh Government will seek to mitigate this risk by engaging with all independent schools in Wales and publishing the relevant guidance on their website. There is also the risk that Estyn do not have sufficient capacity to carry out the increased annual monitoring visits.

## **Preferred option**

333. In view of the benefits to learners and parents of increased transparency and a speedier process of securing placements in independent schools for learners with SEN, **Option 2** is the preferred option. On balance, the estimated increase in monitoring costs and the one-off transitional costs which will be incurred are value for money in delivering the increased transparency, decrease in time for securing placements and reduction in bureaucracy achieved under this option.

#### Giving the responsibility for assessing the need for and arranging post-16 education for learners with learning difficulties and/or disabilities to local authorities

##### **Option 1: Do nothing – continue with current legislation**

334. Under this option, the current process for securing post-16 education for learners with learning difficulties and/or disabilities will be retained. There are therefore no additional costs associated with this option. The following paragraphs establish the cost of the current process for arranging post-16 education for LLDD and are intended to inform the analysis of the alternative options.

### **Costs**

#### Cost to the Welsh Government

335. Welsh Government currently employs 6 members of staff to process applications and negotiate with local authorities, colleges and Careers Wales. In 2012 85 applications for specialist funding were received, 70 of which required further information from other services before a decision could be made. These applications sometimes give rise to Judicial Reviews which are also dealt with by this team, in 2012 the cost of dealing with Reviews amounted to £9,600.
336. In addition, the Welsh Government provides funding to enable LLDD learners to access FE/training via Specialist, Supplementary and Exceptional Funding Grants. The total value of these grants was £16,556,000 in 2012/13. This value has been presented in this RIA for indicative purposes only, the actual budget available for Post-16 learners with learning difficulties in future years is subject to budgetary negotiations.

#### Costs to Careers Wales

337. The Welsh Ministers arrange under section 140 of the Learning and Skills Act 2000 for Careers Wales to carry out all assessments of learners with statements of SEN planning on entering FE. In 2012 they carried out 1,307 assessments for learners with statements and 91 for those without statements with equivalent needs. The estimated cost of carrying out these assessments is £130 per learner. This equates to a total cost of approximately £182,000 per annum. This cost does not include the cost of meeting with the learners and discussing career options as this is provided for all students whether or not they have a statement of SEN. The figure below is an estimate of the cost of processing an application for financial support to enable a learner with learning difficulties to access FE/training.

### Cost to Local authorities

338. Of the 85 applications for specialist funding were received in 2012, 70 required further information from healthcare and social care services before a decision could be made. In 2012 77% of specialist placements were joint funded by health and social care services, this involved negotiation over contribution levels. The estimated cost of dealing with requests for information/negotiations on learners' needs is not expected to change under the different options outlined. The need to exchange information has therefore not been calculated as it has no additional/lesser impact under the different options.

### Cost to Local Health Boards, third sector organisations etc

339. Under the current system other organisations such as local health boards and third sector organisations may also be asked for information required to make a decision on an application for a specialist placement/support to access FE. In Options 1, 2 and 4 this is not likely to change, for instance, under Option 4 a LHB would respond to a call for information from the LA rather than the Welsh Government. These costs have not been included in the RIA as they do not differ under each impact appraisal.

### Cost to Further Education Sector in Wales

340. Under the current arrangements, FEIs complete funding applications for Exceptional funding and submit them to WG annually. In 2012 166 learners were supported in this way, enabling them to access mainstream FE funding. FEIs are also required to retain paperwork relating to Supplementary Funding activity. The estimated cost of this administrative process has been calculated at £32 per learner.

**Table 1 – Annual cost in the Do nothing option**

<b>Annual Costs</b>	
<b>Welsh Government</b>	
Processing applications	£179,000
Securing LLDD	£16,556,000
<b>Total</b>	<b>£16,735,000</b>
<b>Careers Wales</b>	
Assessing needs	£182,000
<b>FE Sector</b>	
Processing applications	£5,300
<b>Total</b>	<b>£16,922,300</b>

341. The total annual cost in the Do Nothing option is £16,922,300.

### **Benefits**

342. The majority of learners access the education and training which is suitable for their needs via FE sector in Wales. The FE provides aids and adaptations for learners with low levels of need to access mainstream FE courses. Where they have greater needs such as 1:1 support and specialist equipment the FE college buys this and claims the cost from the Welsh Government's Exceptional Funding Grant. Hundreds of learners receive support via the Supplementary Grant each year. Last year 166 learners received support via the Exceptional Funding Grant.

## **Risks**

343. Under the current system young people in Wales with learning difficulties and/or disabilities would continue to receive poor transition planning when they leave school and enter FE.
344. Welsh Government officials continue to receive late, incomplete applications for Specialist FE and are constrained in their ability to deal with them quickly and efficiently.
345. There is no incentive for local authorities to engage in early planning with FEIs to ensure suitable education/training is available to learners with LLDD.

## **Option 2 - Give the responsibility for assessing the need for, arranging and funding all post-16 provision for learners with Learning Difficulties and/or Disabilities (LLDD) to local authorities**

346. Under this option, responsibility for funding and securing education/ training would transfer from Welsh Government to local authorities. As a result, a number of costs will transfer from Welsh Government to local authorities.

## **Cost to the Welsh Government**

347. The Welsh Government will produce guidance to explain the new arrangements and explain the changes in responsibilities. The cost of producing this guidance is estimated to be £19,100 (this based on 0.5 x Band E plus 20% of a Grade 7 for 6 months).
348. There will be a cost to the Welsh Government for training SENTW members on the new system. The cost of this training is estimated to be approximately £5,800 based on the daily rate for 10 lay members, 4 Chairmen, one President and including an allocation for travel and subsistence. The cost of specialist advice for this training is estimated at £7,000, based on professional rates of legal services. The total cost for training the SENTW members is therefore estimated to be £12,800.
349. Welsh Government will also provide training to local authorities to explain the new system. The training is expected to be delivered at a local education consortia level. Developing and delivering the training is estimated to cost £2,500 (based on 5% of 1 x SEO).

350. In the initial years, the changes are expected to result in an increase in the number of appeals to SENTW. At present the number of learners with a statement of SEN taking an appeal to SENTW is 0.6%. However, the number of post-16 learners bringing forward an appeal is likely to be greater as the new system will be untested and may raise issues. The estimated increase in cost to deal with the additional of appeals to SENTW is based on an increase of 1% of learners taking forward an appeal (i.e. 14) at an estimated cost of £1,766 each. The cost of these additional appeals is estimated to be £24,724.

### Costs to Careers Wales

351. None

### Costs to local authorities in Wales

352. Local Authorities would be under a duty to make information about the new process available to the public. The requirement could be fulfilled with an article on the website and given that there would be sufficient time to alter printed information the cost has been estimated at under £500 for each of the 22 local authorities. The total one-off cost is therefore estimated to be £11,000.
353. Local authorities would be required to attend a one-off training session on the new system. The cost of one member of staff at the appropriate level to attend one day of training has been estimated at £300 per authority. A total cost of £6,600.
354. Under Option 2 local authorities will be responsible for assessing the needs of learners with LDD in their final year of schooling. As noted above, this role is currently undertaken by Careers Wales arranged by the Welsh Government. For the purpose of this RIA, the cost to local authorities of assessing the needs of young people with LLDD leaving school and entering FE is estimated to be no more costly than the process currently undertaken by Careers Wales. The cost is therefore assumed to be £182,000 per annum. There may be the potential for cost savings as local authorities would be able to engage in transition planning at an earlier stage and will have ready access to social care information which at present Careers Wales and WG has to request from local authorities. However, at this stage, those potential cost-savings are uncertain.
355. Under this option, responsibility for processing applications for specialist educational or training provision will pass from Welsh Government to local authorities. Welsh Government currently has a team of 6 people in place to process these applications and negotiate with FE colleges and local authorities. This work will be spread between the 22 local authorities, however, the cost is assumed to be broadly equivalent to the cost incurred by Welsh Government – approximately £179,000 per annum.
356. The cost of meeting the needs of learners wishing to access specialist (including boarding accommodation) and mainstream FE provision would transfer from Welsh Government to local authorities. For the purposes of this RIA this cost is expected to be similar to the cost incurred by the WG at present, approximately £16,556,000 per annum. This figure is based on

spending in 2012/13 and is not indicative of funding levels in future years which would be subject to negotiation.

357. Under this option, the LA would incur increased costs of dealing with appeals to SENTW for 14 learners. The cost of these appeals is estimated to be no greater than that to the Welsh Government, estimated at £24,724.
358. LA would be under a duty to make advocacy services available. Currently, SNAP Cymru provide advocacy services to nearly all LA for appeals to SENTW. They have estimated the cost of providing support for an appeal to SENTW to be £1,500 per learner. For the estimated 14 additional appeals anticipated each year, this equates to an additional cost of £21,000.

#### Costs to Further Education Sector in Wales

359. FE providers currently access funding for learners who need additional support via the Supplementary and Exceptional funding grants. The FE providers manage the Supplementary fund themselves and do not currently apply for funding for each individual. They also top up the grant from their own resources which they are unlikely to do once there is a mechanism for claiming the whole cost of supporting a learner via the local authority.
360. Under Option 2, the college would have to apply for funding for each learner with a need for support that is all learners attending FEs with extra financial support which is currently provided through the Exceptional and Supplementary funds. This change will incur an additional administrative cost. It is estimated that each application will cost the FE provider a little over £32. Last year the total number of learners supported in this way was 582. Assuming that the number of learners does not change, the additional cost to the FE sector is estimated to be approximately £18,600.

**Table 2 – Transitional and annual costs in Option 2**

<b><u>Transitional Costs</u></b>	
<b>Welsh Government</b>	
Guidance	£19,100
Training for SENTW members	£12,800
Training for Local authorities	£2,500
<b>Total</b>	<b>£34,400</b>
<b>Local Authorities</b>	
Training on new system	£6,600
Providing information on new system	£11,000
<b>Total</b>	<b>£17,600</b>
<b>Total Transitional Costs</b>	<b>£52,000</b>
<b><u>Annual Costs</u></b>	
<b>Welsh Government</b>	
SENTW - additional appeals	£24,700
<b>Local Authorities</b>	
Processing Applications	£179,000
Assessing needs	£182,000
Funding LLDD	£16,556,000
Advocacy services for additional appeals	£21,000
Dealing with additional appeals to SENTW	£24,700
<b>Total</b>	<b>£16,962,700</b>
<b>FE Sector</b>	
Application for funding for individual learners	£18,600
<b>Total Annual Costs</b>	<b>£17,006,000</b>

361. A comparison of Table 1 and Table 2 shows that Option 2 has an additional annual cost of approximately £83,700 compared to the 'Do nothing' option. The total transitional cost of this option is £52,000.

### ***Benefits***

362. The benefits of option 2 are that local authorities can begin transition planning earlier and begin to explore the costs and likely contribution from social services for learners with social care needs earlier. There is also a greater incentive to explore all the options for meeting the needs of the students, including establishing regional consortia to provide for high needs learners including boarding accommodation. Having all the evidence of the education and training



needs of learners within one organisation there is no need for the completion of separate application and assessment procedures for each learner.

## **Risks**

363. There are however several areas of risk attached to option 2 these include the risk of learner's needs being underestimated during assessment and the need for local authorities to process claims for every learner with a need for additional support resulting in unnecessary bureaucracy. There would be little or no incentive for FE to support learners with low levels of need which would increase the pressure on local authorities' budgets. There is a risk of an increase in appeals to SENTW with the resulting delays and the possible incentive for a local authority to put LLDD on discrete courses rather than pay additional cost of support to enable access to mainstream FE courses.

### **Option 3 - Give the responsibility for assessing the need for and arranging of Post-16 provision for LLDD to local authorities with responsibility for meeting costs decided with reference to a set threshold (£x).**

364. Due to the fact that this option was considered unwieldy and counterproductive it was disregarded as a viable option. For this reason the Cost Benefit assessment on this Option, in Section 8 below, has not been completed.

### **Option 4 - Give the responsibility for arranging for an assessment of educational need and securing specialist Post-16 provision for LLDD to local authorities. Give the responsibility for securing specialist provision, including boarding accommodation, by any provider other than the FE sector to Local authorities. Welsh Government to secure provision of education and training and funding of FEIs to enable them to meet additional costs associated with ensuring access for LLDD – preferred option**

365. As with Option 2, this option will result in local authorities having increased responsibilities and will result in a number of costs transferring from Welsh Government to the local authorities.

### **Costs to Welsh Government**

366. Under this option, the Welsh Government would retain the general duty to provide further education and training. The Welsh Ministers will continue to fund additional support to enable LLDD to access mainstream FE courses, via the existing Supplementary and Exceptional funding grants. All other responsibilities would be those of local authorities. Funding for Supplementary and Exceptional education in mainstream FE in 2012/13 was approximately £7,484,000.

367. As with Option 2, the Welsh Government will produce guidance and training to local authorities to explain the new process and their new responsibilities. The

cost of this is assumed to be the same as under Option 2 at £19,100 for the guidance and £2,500 for training.

368. There will be a cost to the Welsh Government for training SENTW members on the new system. The cost of this training is estimated to be approximately £5,800 based on the daily rate for 10 lay members, 4 Chairmen, one President and including an allocation for travel and subsistence. The cost of specialist advice for this training is estimated at £7,000, based on professional rates of legal services. The total cost for training the SENTW members is therefore estimated to be £12,800. An in Option 2, the changes are expected to result in an increase in the number of appeals to SENTW. The estimated increase in cost to deal with the additional of appeals to SENTW is based on an increase of 1% of learners taking forward an appeal (i.e. 14) at an estimated cost of £1,766 each. The cost of these additional appeals is estimated to be £24,724.
369. The transfer of some functions to local authorities means that Welsh Government will be able to deliver its responsibilities with a reduced workforce (compared to the 'Do Nothing' option). LA will no longer submit applications to WG for specialist funding, this will result in a cost saving to WG for the cost of dealing with those applications.
370. It is estimated that the administrative cost incurred by Welsh Government will be approximately £76,000 per annum (based on 0.25 x SEO, 1 x HEO and 1 x TSO).

#### Cost to Careers Wales

371. There will be no additional costs to Careers Wales. Their role will be to provide Careers guidance and advice and there may be instances where they are called on to give expertise, but they will no longer be contracted to carry out 'section 140' assessments as they do now.

#### Cost to local authorities

372. There will be a one-off need for 1 day of training for local authority representatives. The cost of this is estimated at £6,600.
373. There will be a transitional cost to local authorities for making information available to the public on the system. This is estimated to cost approximately £500 per local authority or £11,000 in total.
374. As with Option 2, this option places a duty on local authorities to assess the needs of learners with learning difficulties and/or disabilities for FE. This assessment is currently carried out on behalf of WG by Careers Wales. The estimated cost of carrying out approximately 1,400 assessments each year is £182,000. As noted under Option 2, there may be the potential for cost savings as LAs would be able to engage in transition planning at an earlier stage and will have ready access to social care information which at present Careers Wales and WG has to request from LAs. However, at this stage those potential cost savings are uncertain and the estimated cost of carrying out these assessments for the purposes of this options appraisal is taken to be the same for local authorities as it is for Careers Wales.

375. Where a learner's needs cannot be met in the FE sector, then the local authority would be responsible for securing that provision, including boarding accommodation where necessary. This funding is currently dealt with by the WG under the Specialist funding grant and totalled £9.072m, in 2012/13. This is not indicative of any future funding allocation which is subject to negotiation.
376. Currently the system requires individuals to apply to the Welsh Government for funding for Specialist placements. Under this option the local authorities will no longer have to undergo that application process, resulting in an overall cost saving.
377. Given the new right to appeal to SENTW the LA may be engaged in the increased number of appeals to SENTW, as in Option 2 the level of appeals has been estimated at 1%, or 14 appeals, with an additional cost of £24,700.
378. As in Option 2, local authorities will be required to make advocacy services available to parents and learners with learning difficulties. The additional cost of this advocacy associated with the anticipated increase in appeals is estimated to be £21,000.

#### Costs to Further Education sector in Wales

379. The cost of meeting the requirement to meet the needs of the learners with LDD will continue to be met via annual funding formula. There would be no additional cost to the FE sector over and above the cost of processing funding applications for Exceptional Funding identified under Option 1 – Do Nothing, estimated at £5,300. As now, FEIs are likely to continue to meet the needs of learners requiring low level interventions to access mainstream courses, without completing a request for funding for each learner which is not cost effective.

**Table 3 – Transitional and annual costs in Option 4**

<b><u>Transitional Costs</u></b>	
<b>Welsh Government</b>	
Guidance	£19,100
Training for SENTW members	£12,800
Training for Local authorities	£2,500
<b>Total</b>	<b>£34,400</b>
<b>Local Authorities</b>	
Training on new system	£6,600
Providing information on new system	£11,000
<b>Total</b>	<b>£17,600</b>
<b>Total Transitional Costs</b>	<b>£52,000</b>
<b><u>Annual Costs</u></b>	
<b>Welsh Government</b>	
Processing applications for those able to attend mainstream FE	£76,000
Funding for mainstream FE	£7,484,000
SENTW - additional appeals	£24,700
<b>Total</b>	<b>£7,584,700</b>
<b>Local Authorities</b>	
Assessing needs	£182,000
Provision of specialist education/training	£9,072,000
Advocacy services for additional appeals	£21,000
Dealing with appeals to SENTW	£24,700
<b>Total</b>	<b>£9,299,700</b>
<b>Further Education sector</b>	
Processing applications	£5,300
<b>Total Annual Costs</b>	<b>£16,889,700</b>

380. As with Option 2, the transitional cost associated with this option is £52,000. A comparison of Table 3 with Table 1 shows that the annual cost of Option 4 is approximately £32,600 lower than the 'Do Nothing' option. This is a result of the lower application processing costs (for those requiring specialist education) in this option.

### ***Benefits***

381. As at present, the majority of learners wishing to access FE can do so without FE sector or local authority having to fill in application forms for funding to meet the costs of support for low level interventions.

382. The transition planning (including the collection of evidence) for learners with learning difficulties and/or disabilities will begin earlier and local authorities

would have an incentive to look for a wider range of options to meet the learners' needs.

383. There would be a cost saving from local authorities no longer having to apply to WG for funding for specialist placements. Under this option, the assessment of a learner's need would be part of the process of transition planning rather than a separate application process and would be part of the annual review of the SEN. statement as set out in the SEN Code of Practice for Wales. This would result in an estimated overall cost saving of £32,600 per annum.
384. The requirement for earlier transition planning between LA and FEIs would likely result in greater information on the needs learners being available to the FE to enable them to plan for demand.
385. FEIs will continue to receive additional funding to enable learners to access mainstream courses, currently dealt with by the WG under Supplementary and Exceptional Funding. FEI would not have to complete an application form for funding each individual with learning difficulties as Option 1.

### **Risks**

386. There is a risk of inappropriate assessments of need resulting in more cases being appealed via the SENTW. There is also the risk that local authorities and FE sector agree that a greater number of learners can access FE with funding for additional support and the pressure placed on the funding grant is unsupportable.
387. Given the evidence above, Option 4 is the preferred option. The main reasons are that it enables earlier, better transition planning for learners and FE providers, as LAs will have access to information on the needs of learners throughout their education, not simply an assessment done during their final school year. There are potential cost savings for local authorities as they will save the time currently spent on negotiating with social care services. It provides easier, quicker access to FE for the majority of learners who require a low level of intervention to access mainstream course in FE colleges. Learners with higher needs will receive earlier transition planning which will require less negotiating between agencies as education and social services are located within the same organisation. The extension of the right to appeal to the SENTW for learners accessing post-16 education and training increases the accountability of local authorities and incentivises earlier transition planning. The code of practice which will be published by the Welsh Government will set out the roles and responsibilities of all those involved in the process.

### **School Term Dates**

#### **Option 1 - Do nothing**

### **Costs**

388. Leaving the current arrangements as they are would mean that local authorities continue to set school term dates for community, community special, voluntary controlled and nursery schools, while governing bodies do the same for

voluntary aided and foundation schools. There would not be a duty imposed in local authorities or relevant governing bodies to co-operate and co-ordinate with each other when setting term dates, nor would the Welsh Ministers be able to intervene in term date setting. As a result, parents and carers of children probably would continue to face the same difficulties in finding and funding appropriate child care when school term dates for the children within the family are not harmonised. There are therefore no additional costs associated with this option.

389. Given the impact on working families of even a single day's divergence in term dates, ideally the Welsh Government would have liked to have explored the possibility of harmonising INSET days throughout Wales. However, the power to provide for who may determine INSET days currently rests with the Secretary of State in Whitehall. Therefore it was not possible to explore allowing the Welsh Ministers to intervene in the setting of INSET days in the Education (Wales) Bill.

### **Benefits**

390. There are no additional benefits associated with the 'Do Nothing' option.

### **Risks**

391. By not taking steps to ensure harmonisation of school term dates across Wales, there is a risk that many families will continue to struggle to provide and finance adequate childcare. In turn, this may result in real hardship for some families, particularly those with a lower income.
392. The upshot of this is, for some families, that there is no real option of providing childcare. This may result in some parents taking the risk of leaving particularly older children unsupervised, even though such children are often too young to be left on their own for extended periods. Also, such older children may be left in charge of their younger brothers and sisters.
393. There is also a risk that some parents will choose to take paid sick leave rather than using a day's holiday leave or paying for child care.

## **Option 2: Do minimum – Issue a non-binding Ministerial Statement**

### **Costs**

394. The costs of this option would depend on whether the statement had the desired effect, and resulted in school term dates being harmonised throughout Wales.
395. If the use of a non-binding Ministerial statement was to work, then the costs would be the same as those set out in *Option 3 – Introduce Legislation* below, except that there would not be the potential cost to the Welsh Government in providing staff to support the Welsh Ministers in considering and using their powers to intervene in school term date setting.

396. If the use of a non-binding Ministerial statement did not work, then the costs would be the same as in *Option 1 – Do Nothing* above.
397. Local authorities should already be working together (and by extension, working with the governing bodies of voluntary aided and foundation schools within their respective areas) in an attempt to achieve consensus on term dates, given the past efforts of the Welsh Local Government Association. Therefore there should be no extra costs involved for Local Authorities in working together and with relevant school governing bodies in an attempt to achieve consensus on term dates.
398. Similarly, it is believed that the governing bodies of voluntary aided and foundation schools should already be working with their local authority in an attempt to achieve consensus on term dates, and discussing such dates with the governing bodies of other voluntary aided and foundation schools within their local authority area. Therefore there should be no extra costs involved for these governing bodies in working with their local authorities and with other relevant school governing bodies within their local authority area in an attempt to achieve consensus on term dates.

## **Benefits**

399. The main benefit of this option is that, were it to work, all of the benefits outlined in *Option 3 – Introduce Legislation* below would be achieved without the need to make new legislation. This would save the time and related costs of both the National Assembly for Wales and the Welsh Government in bringing forward, scrutinising and making new primary legislation.
400. If this option did not work and consensus on school term dates was not achieved, then the benefits would be the same as those set out in *Option 1- Do Nothing* above.

## **Risks**

401. As explained earlier, while a non-binding ministerial statement could prove useful in persuading local authorities and the governing bodies of voluntary aided and foundation schools to work together when setting term dates there is a risk that this desired outcome would be achieved. Given the fact that the Welsh Local Government Association has attempted for several years without success to get the 22 local authorities in Wales to achieve consistency in date setting, it is entirely possible that a Ministerial statement would not have the desired effect.
402. In addition to the 22 local authorities, the governing bodies of voluntary aided and foundation schools would also have to agree with the dates set. There is a significant risk that such a large number of bodies would not reach agreement due to the issue of a Ministerial statement, which is non-binding.

**Option 3: Introduce legislation – place an obligation on local authorities and the governing bodies of voluntary aided and foundation schools to work**

**together, and give the Welsh Ministers a discretionary power to intervene in term date setting - preferred option**

## **Costs**

403. Introducing and making the proposed legislation would mean that harmonisation of school term dates could be achieved for all maintained schools throughout Wales, whether by local authorities and relevant school governing bodies reaching consensus amongst themselves, or by the Welsh Ministers using their powers of direction where such consensus cannot be achieved.

### Local Authorities and Governing Bodies of Voluntary Aided and Foundation Schools

404. As previously mentioned, there should be no extra costs involved for local authorities in working together and with relevant school governing bodies in an attempt to achieve consensus on term dates. This is because local authorities should already be working together (and by extension, working with the governing bodies of voluntary aided and foundation schools within their respective areas) in an attempt to achieve consensus on term dates. This is particularly the case given the past efforts of the Welsh Local Government Association to achieve consensus on term date setting.

405. Similarly, there should be no extra costs involved for the governing bodies of voluntary aided and foundation schools in attempting to reach consensus on term dates. This is because governing bodies should already be working with their local authority with a view to agreeing dates, and discussing term dates with the governing bodies of other voluntary aided and foundation schools within their local authority area.

406. Local authorities already display the term dates which they have determined for a school year in advance on their websites. Therefore informing the Welsh Government of these dates is likely to be of no extra cost, particularly as it is expected that this information may be given by electronic means (i.e. by email).

407. Some of the consultation responses received from local authorities and voluntary aided & foundation schools thought that the suggested process by which local authorities are to demonstrate the agreement of the relevant schools governing bodies within their areas to the term dates may be administratively burdensome. However, 81% of respondents who provided a response to the consultation question on whether the suggested notification process would work either agreed or neither agreed nor disagreed with the suggested notification process.

408. The Bill provides that local authorities are to inform the Welsh Ministers of the dates set for all maintained schools within their respective areas; this will be the case whether or not there is consensus on those dates. The Welsh Government believes that the notification process should not be burdensome or mean that extra costs are incurred by local authorities. As local authorities ought to be liaising already with the relevant school governing bodies within their areas, demonstrating the approval of a governing body to the term dates notified for their school by obtaining the signature of the chair to the letter which notifies the



Welsh Government of term dates should incur no further cost. Further, given the expectation that the notification letter may be in electronic form and have signatures affixed electronically, supplying the required information to the Welsh Government should not involve an extra cost.

409. In any event, it is expected that the exact process by which local authorities are to inform the Welsh Government of dates agreed and/or set will be provided in Regulations. The policy underpinning these Regulations will be consulted upon, giving local authorities and relevant school governing bodies an opportunity to shape the detail of the process by which term dates are to be notified.

### Welsh Government

410. There will be a cost to the Welsh Government of financing an official to undertake the work associated with carrying out tasks such as liaising with stakeholders when gathering the information needed to advise the Welsh Ministers, monitoring the views of stakeholders and undertaking consultation on any proposals for the Welsh Ministers to use their term date setting powers. It is expected that a higher executive officer will be employed for 2 working days every week for the first two of years of these new arrangements. This will be at an average cost in the region of £15,320 per annum to the Welsh Government,<sup>11</sup> making a total cost of £30,640.
411. This cost to the Welsh Government is based on the assumption that the proposed legislative changes take effect, and the Welsh Ministers find that it is necessary to use their powers on term date setting for the first two years after the proposed legislation comes into force. If it is necessary for the Welsh Ministers to continue to exercise their powers - probably because local authorities and relevant school governing bodies are still unable to reach consensus on term dates more than two years after the legislative changes come into force - then this cost will arise for each year in which the Welsh Ministers use their term date-setting powers.
412. If the Welsh Ministers do not need to use their powers to intervene in term date setting after the proposed legislation comes into force, then this extra cost to the Welsh Government will not arise. The cost of “monitoring” the notification letters from the 22 local authorities in Wales will be absorbed into the general work of the Department for Education and Skills.

### Families

413. Feedback to the consultation on proposals to harmonise school term dates highlighted the fact that, for some families, not having harmonised school term dates may be of benefit as it sometimes allows for cheaper holidays to be taken. For example, if a local authority chooses to have its Easter break a week later than the majority of local authorities, then holidays in the final week of that local authority’s later Easter breaks can cost less as they are deemed to be outside of “peak times”. Harmonising school term dates will remove this opportunity.

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<sup>11</sup> Based on a mid-range higher executive officer, and taking account of National Insurance and pension costs to the Welsh Government

414. To give a specific example, most local authorities are having the Easter break from Saturday 23<sup>rd</sup> March 2013 to Sunday 7<sup>th</sup> April 2013. However, some local authorities and voluntary aided schools are having their Easter break from Friday 29<sup>th</sup> March 2013 to Sunday 14<sup>th</sup> April 2013.
415. This means that families with children for whom the Easter break does not end until 14<sup>th</sup> April may be able to take advantage of lower holiday prices. For example, a caravan in Saundersfoot for a family of 2 adults and 2 children from 30<sup>th</sup> March 2013 for 7 nights would cost £345. The same caravan for the same family a week later would cost £275, which is a saving of £70.<sup>12</sup> Similarly, a lodge for 2 adults and 2 children in Bluestone National Park for 7 nights from the 29<sup>th</sup> March 2013 would cost £1,079, while the same lodge for the same family on the 5<sup>th</sup> April 2013 would cost £898. This represents a substantial saving of £181.<sup>13</sup>
416. The savings made for a family taking a holiday abroad during the Easter break are not quite so noticeable. For example, a family of 2 adults and 2 children staying all inclusive in a 3 star hotel on the Costa Del Sol and flying from Cardiff could pay £2,141 for the week of 31<sup>st</sup> March – 7<sup>th</sup> April 2013. The same family on the same holiday a week later from the 7<sup>th</sup>- 14<sup>th</sup> April 2013 would pay £2,121. This represents a saving of £20.<sup>14</sup> Savings on holidays abroad outside of term time may be more noticeable later in the year.
417. There has been some recent academic work on the on the importance of a holiday and the benefits that it can bring to families<sup>15</sup>. Benefits of taking a family holiday are said to include a strengthening of family relationships and a broadening of experiences, as well as a general benefit to mental health.
418. However, the difficulties experienced by some working families with finding and financing additional childcare when school term dates are not harmonised may be said to outweigh the potential problems of increased holiday costs over “peak” periods.

### Child Care Providers

419. Achieving harmonisation of school term dates would in turn mean that the families who now have to find and often finance further child care due to school term dates not being harmonised would no longer have to do so.
420. This would mean a loss to childminders and other providers of child care, as there would no longer be a need for working families to find and fund the further child care which may currently be required when term dates are not harmonised.
421. The exact loss to individuals and organisations cannot be calculated with any precision. This is because the exact numbers of children requiring such care may vary considerably: parents’ preferred option may be to find a trusted friend

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<sup>12</sup> Sunnyvale Holiday Park, Saundersfoot; Glen Silver Birch caravan. Prices as at 05/03/2013

<sup>13</sup> Bluestone National Park Resort; “Caldey” style lodge. Prices as at 05/03/2013

<sup>14</sup> Polynesia Hotel, Benalmadena Costa Del Sol (Thomson Holidays). Prices as at 05/03/13

<sup>15</sup> Family Holidays During School Term Time: Does Education Really Inhibit Family Access To Tourism? Emily Rayner, University of Lincoln. <http://www.tsvc.lincoln.ac.uk/papers/submission.php?paper=102>

or family member to provide “free” child care or to take leave themselves. However, this preferred option may not always be possible for all of the times when further childcare is required, leading to considerable fluctuations in the numbers of children placed with “professional” child care providers.

422. There would be a corresponding benefit to families in not having to pay for the extra child care (see below).

### **Benefits**

423. The foremost benefit of introducing the proposed legislation is that there would be a statutory mechanism in place to ensure the school term dates are harmonised throughout Wales, with variations in term dates occurring very occasionally, and only when needed. (For example, if an event such as the Ryder Cup were to take place, it may be beneficial to have different school term dates for schools within a 10 mile radius of the venue).
424. As a result of school term dates being harmonised, particularly those working families on a lower income and single parent families would no longer face the prospect of having to struggle to provide and finance adequate childcare.
425. Child care costs vary throughout Wales according to location and the type of child care used. For example, a day’s fee for holiday care in a private scheme in the Cardiff and Penarth area can be around £20/30 a day per child, while childminders in the same area can charge around £4/5 per hour per child. Reduction in price is sometimes offered for siblings, and some child care providers and child minders include meals and day trips in these prices.
426. In the north of Wales in the Flint area child care prices are also relatively high. A day’s fee for holiday care in a private scheme in Flint can be as much as £20 to £30 per child per day, while childminders in the same area can charge from just over £2 to around £4 per hour per child. Once again, reduction in price is sometimes offered for siblings, and some providers include meals and day trips in the price.
427. Recent findings from the Daycare Trust and the Family Parenting Institute<sup>16</sup> highlight the paucity of child care provision for older children in Wales. No local authorities in Wales reported that there was sufficient childcare for children in the 12-14 year old age group, while only 13% reported sufficient childcare for the 5-11 year old age group. Therefore parents may find it very difficult to find adequate childcare, even if they can pay for it.
428. The Daycare Trust report also found that child minder costs in Wales for children aged over 2 years has increased by 3.2% in the last year; for 15 hours a week of care parents in Wales now pay an average of £48.46 per child per week, which equates to £3.23 per hour.
429. In a family with 2 children needing care, this could mean around £50-£60 per day needing to be found from the family budget if a full day’s care of around 9

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<sup>16</sup> Daycare Trust and the Family and Parenting Institute survey reveals massive hike in costs for school-age childcare: <http://www.daycaretrust.org.uk/pages/childcare-costs-surveys.html>

hours is required. Given that school term dates can often diverge for up to a school week, particularly if half terms are not harmonised, this could mean that the same family with 2 children needing childcare will have to find £250/300. Even if a family has only 1 child needing care, a full school week could mean needing to fund around £125/130, which is money that many working families simply do not have to spare.

430. The alternative to finding and funding child care is for an adult member of the family or trusted friend to look after the child or children. Not everyone is fortunate enough to have family members or friends who do not work and who are willing to provide child care, therefore often the only other option is for a parent who works to take time off to provide childcare.
431. Providing that the parent's employer is content, this will usually mean either the parent using some of their leave entitlement, or not being paid for the time off. Either way, there is a loss to that parent which is the equivalent of a day's pay for each day taken to provide child care.
432. The exact financial loss will vary depending on how much the parent who is providing the care is paid, but the impact may well be harder on those families who are lower paid. Losing a day's pay (or taking the equivalent in holiday pay) of £40 may well be harder if a person earns £200 in a typical week than losing a day's pay of £200 if a person earns £1000 per week. Finding £40 may mean eating into the family's food or heating budget for the week. Using this same example, losing a full week's pay of £200 may be very difficult indeed for a lower paid family. By contrast, while losing a week's pay of £1,000 would still be difficult for a higher paid family, such a family would be more likely to have the financial resources to cope better with such a loss. Depending upon the number of children needing childcare, it may be that financing the extra child care needed would be the cheaper option, particularly for the higher paid family in this example.
433. It is also likely that the impact of having to find and finance childcare is greater on single parent families. Where both partners are working, the blow of one parent losing earning or taking a day's leave is likely to be more easily absorbed.
434. There will be a further benefit in that there will be no need for families to take the risk of leaving older children unsupervised and in charge of younger siblings, even though such older children are often too young to be left on their own for extended periods.
435. The response of the Children's Commissioner to the consultation on proposals to reform the way in which school term dates are set acknowledged the problems associated with financing additional child care, saying:

*"...the changes outlined....will mean that some families in Wales will not have additional childcare costs during school holidays and this is to be welcomed".*

## **Risks**

436. If school term dates are harmonised there will not be the opportunity for some parents whose children currently attend schools which have different term dates to the majority of maintained schools to benefit from cheaper holiday prices. As a result, there is a risk that such families may be unable to afford a holiday, and will miss out on the social and health benefits which a holiday can bring.
437. Rather than missing out on a holiday, there is a risk that parents who had previously benefitted from their children's school term dates not being harmonised may choose to keep their children out of school during term time in order to afford a holiday. This could result in an increase in official absentee figures, as not all parents will seek, or be given, authorisation to keep their children out of school.
438. Keeping children out of school in order to benefit from a family holiday may be detrimental to the children's education, resulting in lower levels of academic achievement.

## **Conclusion and preferred option**

439. Option 1 would do nothing to change the current position regarding the setting of school term dates, and therefore it is very likely that term dates would continue to diverge throughout Wales. This would mean that nothing was done to address the concerns of working families regarding problems in finding and financing further child care. For this reason, option 1 is not our preferred option.
440. Option 2 would attempt to change the current position without resorting to legislation. However, given the difficulties which the Welsh Local Government Association have encountered in trying to achieve consensus on term dates, it is believed to be unlikely that a non-binding Ministerial statement would result in consensus. Once again, this would mean that the concerns of working families regarding problems in finding and financing further child care were not addressed. For this reason, option 2 is not our preferred option.
441. Our preferred option is option 3, which is to legislative to place an obligation on local authorities and the governing bodies of voluntary aided and foundation schools to work together and give the Welsh Ministers a discretionary power to intervene in term date setting. This is because option 3 is the only option which would have the desired effect of ensuring that harmonisation of school term dates was achieved: variations in term dates would occur very occasionally, and only where they could be fully justified. This in turn would mean that the concerns of working families regarding problems in finding and financing further child care were properly addressed.

The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales under section 19 of the Education Act 2005; and

442. These changes are administrative in nature and have no cost implications, therefore have not been subject to cost and benefits analysis.

## 9. Competition Assessment

443. The provisions within the Bill will not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition.

444. There is therefore no need or the competition filter to be applied in this case.

## 10. Post implementation review

445. The Welsh Government will review the legislation, with the exception of the technical changes as follows:

### Education Workforce Council

446. Regular liaison meetings between officials of Welsh Government and the Education Workforce Council will monitor the implementation of reforms to the Council and its functions introduced through this Bill.

447. The mandated Audit Committee will review and scrutinise the Council's financial affairs which will be highlighted in its reports and recommendations, which will be sent to Welsh Ministers.

### Giving the responsibility for assessing the need for and arranging post-16 education for learners with learning difficulties and/or disabilities to local authorities

448. Figures for the number of appeals lodged with SENTW will be reviewed on an annual basis and used to inform discussion with Local Authorities about their arrangements and processes.

449. HMI Estyn already consider ALN provision as part of their regular inspections of local authorities. Any significant problems in relation to ALN provision will be reported in post inspection reports and actions plans which will be monitored by the department.

450. The Welsh Government will seek to include within the remit of Estyn a review of how Local Authorities have implemented their new duties and compliance with statutory guidance one year after commencement.

### School Term Dates

451. It is anticipated that a review will be undertaken in the year after the close of the first school year for which the policy is to have effect. It is anticipated that the review will include direct liaison (via electronic means) with the governing bodies of faith schools to ensure that their views are appropriately reflected.

452. The first school year for which the policy is to have effect is expected to be 2016-17, therefore the review will be expected to take place between July 2017 and July 2018, and report in September 2018.

# **EDUCATION (WALES) BILL**

## **EXPLANATORY NOTES**

### **Part 1 – Introduction**

1. These Explanatory Notes relates to the Education (Wales) Bill. They have been prepared by the Department for Education and Skills of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

### **Background**

### **Part 2 – Education Workforce**

2. The General Teaching Council for Wales (GTCW) was established under the Teaching and Higher Education Act 1998. It has been responsible for the registration and regulation of teachers since that time.
3. The Bill renames the GTCW as the Education Workforce Council (the Council) and expands its remit to include the registration and regulation of more of the people who are involved in teaching and learning in Wales. As a consequence of this change, the Bill updates the Council's constitution, governance arrangements and functions. The Bill also provides a mechanism for new categories of person to be added to the regulatory remit of the Council.
4. The Bill also takes the opportunity to restate some of the relevant provisions relating to teachers and learning support workers which are currently in the Education Act 2002.

### **Part 3 – Persons with Learning Difficulties**

#### **s347**

5. The proposals in the Bill reforms the registration of independent schools in Wales by the repeal of s347 of Education Act 1996 and section 160 (s160) of the Education Act 2002 (EA 2002) in order that all independent schools looking to provide for children with statements of SEN are under the scope of the current Welsh Government agreement with HMI Estyn to undertake regular monitoring visits.

### **Post 16**

6. The Bill will place the responsibility for assessing the needs of, and securing specialist post-16 education for learners with learning difficulties and/or disabilities with the local authority. This will be done by inserting new sections (40A-O) after section 40 of the Learning and Skills Act 2000; amending section 41 of the Learning and Skills Act 2000 Act and inserting new sections (41A and 41B) to the Learning and Skills Act 2000.



## **Part 4 – Miscellaneous**

7. Part 4 of the Bill deals with two miscellaneous education topics. Section 49 deals with term and holiday dates and the times of school sessions and section 50 deals with the arrangements for appointing Her Majesty's Inspectors of Education for Wales.

### **Term and holiday dates and times of school sessions**

8. The existing arrangements for determining the dates of terms and holidays and the times of school sessions are set out in section 32 of the Education Act 2002.
9. In section 49 the Bill introduces a new requirement on those responsible for setting the dates of school terms and holidays at maintained schools in Wales to work together to ensure that the dates determined are the same (or as close as possible to being the same).
10. The Bill also confers a new power of direction on the Welsh Ministers in relation to school term and holiday dates. This power will enable the Welsh Ministers to require that particular dates may be determined for a school. This can be used both to ensure that there is consistency across schools but also to take account of special circumstances, such as where it may be desirable for a particular school to have a different holiday date owing to a major sporting event.
11. The Bill also restates the existing legislative provisions relating to the times of school sessions in a section which now relates only to Wales.

### **Her Majesty's inspectors of education for Wales**

12. The Bill repeals section 19 (6) of the Education Act 2005 to remove the Secretary of State from advising Her Majesty in respect of her functions which are within devolved competence, including the appointment of HM inspectors of education for Wales. This function will be carried out by the First Minister.

## **COMMENTARY ON SECTIONS**

### **Section 1 – Overview**

13. This section summarises the main provisions of the Bill. It is intended to be a sign posting provision and to introduce key concepts. It also introduces the index of defined words and expression which may be found in Schedule 4.

## **Part 2 – Education Workforce**

### **Education Workforce Council – sections 2-6 (see also Schedule 1)**

14. The General Teaching Council for Wales (GTCW) is the professional body for the teaching profession in Wales established by the Teaching and Higher Education Act 1998. The GTCW has a regulatory role (including maintaining the Register of qualified teachers in Wales), an advisory role (including advising

the Welsh Government on teaching issues) and an operational role (including promoting continuing professional development of teachers and teacher recruitment).

15. Section 2 changes the name of the GTCW to the Education Workforce Council and introduces Schedule 1 which sets out the updated constitution of the body.
16. Subsection (1)(a) confirms that the GTCW and the Education Workforce Council are the same legal entity. This means, for example, that the contractual terms and conditions of its employees are unaffected by the changes.
17. Section 3 sets out the principal aims of the Council. These are:
  - to contribute to the improvement of the standards of teaching and the quality of learning in Wales; and
  - to maintain and improve standards of professional conduct amongst teachers and others in the education workforce in Wales.
18. Section 4 provides an overview of the main functions of the Council. These are:
  - a. to provide advice related to its functions (see section 7);
  - b. to promote careers in registrable professions (see section 8);
  - c. to establish and maintain a register (see section 9);
  - d. to keep itself informed about the induction and appraisal of the education workforce (see sections 17 and 19);
  - e. to review and revise a code of conduct and practice (see section 24);
  - f. to investigate and take action in relation to unacceptable professional conduct and professional incompetence (see section 26); and
  - g. to hold and provide information (see sections 33 and 35).
19. Section 5 gives powers to the Welsh Ministers to confer or impose additional functions on the Council, by way of an order. Before making such an order the Welsh Ministers must consult appropriate persons or bodies (e.g. the Council).
20. Section 6 gives powers to the Welsh Ministers to give directions to the Council. This could be used in circumstances where the Welsh Ministers had concerns about the governance of the Council or in relation to the manner in which it was exercising its functions. The Council must comply with such a direction.
21. However, the Welsh Ministers may not give a direction in relation to a specific application for registration, an appeal relating to such an application or a specific disciplinary case.

### **Provision of advice and promotion of careers – sections 7-8**

22. As set out in section 4 of this Bill one of the main functions of the Council is to provide advice on matters related to the persons whom it regulates and on teaching and learning matters. Under section 7 of the Bill the Welsh Ministers may require the Council to provide advice to them or to other persons on 'relevant matters' (these are prescribed in section 7(2)).

23. With the consent of the Welsh Ministers the Council may also give such advice to other persons it considers appropriate. Advice may be given on a range of matters including training, career development, performance management and fitness to practice.
24. The Council requires the consent of the Welsh Ministers to publish any advice it gives under section 7.
25. Section 8 provides for the Council to be able to give advice, organise conferences and lectures and publish promotional materials, so as to promote the careers of the registered educational workforce, as may be required by the Welsh Ministers. In addition to careers fairs, this may include organising conferences and lectures which will count towards the continuing professional development of register persons.

### **Registration of the Education Workforce – sections 9-13 (and Schedule 2)**

26. Sections 9 to 13 deal with the registration of the education workforce. They need to be read in conjunction with Schedule 2.
27. By virtue of section 9, the Council is required to keep a register of every:  
  
teacher in a school or further education institution in Wales,  
school learning support worker, and  
further education support worker.
28. Schedule 2 sets out the exact descriptions of who is required to register and allows the Welsh Ministers to add new categories of persons who are required to register by order. This might include, for example, youth workers or persons who are involved in the work based learning schemes established under section 31 of the Learning and Skills Act 2000.
29. A person who wishes to be registered must apply to the Council and meet the eligibility conditions in section 10. If the person meets those conditions, the Council must register them.
30. Registration may be on a full or a provisional basis. There are a variety of circumstances where it may be appropriate for a person to be provisionally registered including while the person:  
  
undertakes a period of induction  
starts teacher training  
works towards obtaining a required qualification

However, a person's eligibility to be registered is assessed only once.

31. Section 10 sets out the conditions a person must meet in order to be eligible to be registered. This needs to be read in conjunction with section 40. The conditions include a requirement for the Council to be satisfied that the applicant is suitable to be registered. Section 11 provides a right of appeal

against the Council's decision on the grounds of suitability.

32. Section 12 allows the Welsh Ministers to make regulations about the fees that the Council may charge in connection with registration. This includes both the amount of fees that may be charged and also the methods that may be used to collect those fees. For example, employers of registered persons could be required to deduct the fees from the person's salary and send that to the Council.
33. Section 13 allows the Welsh Ministers to make regulations about registration generally. Subsection (2) provides some examples of how the power may be exercised. This includes a broad range of topics from the administrative and procedural aspects of registration through to the consequences of a person providing false or misleading information to the Council as part of the registration process and how members of the public can access the information that the Council holds.

### **Requirements to be satisfied to provide services – sections 14-16**

34. Sections 14 to 16 impose limitations on who may provide certain services in maintained (and special) schools and further education institutions in Wales. In every case, the person will require to be registered in order to provide the services. In addition, the person may have to have certain qualifications or experience or meet certain conditions.
35. Section 14 deals with teachers and learning and support workers. The regulations may specify the types of services which a person can't provide without meeting the various requirements. This may include, for example, teaching or preparing lesson plans.
36. Sections 15 and 16 deal with the provision of education and other services at (or for) further education institutions. This restriction on providing services includes people who provide further education (or support such education) in the community.
37. Education in this context includes vocational, social, physical and recreational training.

### **Induction of registered persons – sections 17-22**

38. Section 17 enables the Welsh Ministers to require a person to complete a period of induction before that person can be fully registered.
39. Regulations made under this section may set out the details of what will be required by way of induction for each category of registration. This will include how long the induction period should be; where it must take place and who should assess if the induction period has been completed satisfactorily. The regulations may also provide for the consequences of not completing an induction period satisfactorily (for example, a person may not be able to be employed as a teacher in a maintained school).

40. Section 18 allows the Welsh Minister to set the standards that a person undertaking an induction period must be assessed against. In setting those standards the Welsh Ministers must consult the Council.
41. Section 19 provides a person who has been judged not to have satisfactorily completed a period of induction with a right of appeal to the Council against the decision.
42. Section 20 deals with where a person or body with functions in connection with induction periods is failing to perform those functions or is performing those functions in an inadequate way.
43. It does so by applying the relevant provisions of the Schools Standards and Organisation (Wales) Act 2013 to these functions. This gives the Welsh Ministers the power to intervene and issue directions in accordance with that Act in relation to the governing body of a further education institution and appropriate bodies (other than local authorities and the governing bodies of maintained schools).
44. Because this Bill is classified as one of the “Education Acts” (see section 51 of the Bill) the Schools Standards and Organisation (Wales) Act 2013 already applies to local authorities and governing bodies of maintained schools or special schools. Subsection (3) confirms that there is no intention to effect the operation of that Act in this respect.
45. Section 22 deals with the funding aspects of a situation where a person has failed to satisfactorily complete a period of induction but remains employed (on restricted duties) at a maintained school with a delegated budget. In these circumstances, a local authority may only make deductions of costs relating to the person’s remuneration from the school’s budget share if there are good reasons for doing so.

### **Appraisal of registered persons – section 23**

46. Section 23 allows the Welsh Minister to make regulations requiring the appraisal of the performance of a registered person. The regulations may impose different requirements in relation to different categories of registration.

### **Code of conduct and practice for registered persons – sections 24-25**

47. Section 24 requires the Welsh Ministers to prepare and publish a code of conduct and practice which specifies the standards which are expected of registered persons. The Code may specify different standards for the different categories of the education workforce.
48. The Council are required take over the code and keep it under review. It must review the code within 3 years of when it was last published or whenever a new category of registration is added.
49. Section 25 allows the Welsh Ministers to make regulations about the Code. This includes both the form and content of the Code as well as the consequences when a registered person has not complied with the Code.

## **Disciplinary functions of the Council – sections 26-32**

50. Sections 26 to 32 deal with the disciplinary functions of the Council.
51. By virtue of section 26, the Council is required to carry out investigations where it is alleged that a registered person:
  - is guilty of unacceptable professional conduct or serious professional incompetence; or
  - has been convicted of a relevant offence.
52. Following their investigation the Council must decide what further action to take. Where the Council determines a person is guilty the Council is able to make a disciplinary order. Where it finds no case to answer, the Council may discontinue the case.
53. Section 28 allows Welsh Ministers to make regulations about the disciplinary functions of the Council. This includes procedures for investigation, disciplinary orders and action that may be required of an employer when an employee is the recipient of a disciplinary order.
54. Regulations cannot require a person to give any evidence or produce any documents which that person would not be compelled to give in civil proceedings in any court in England and Wales. Regulations can also make provision that any teaching prohibition order made in relation to a teacher in England has a corresponding effect in Wales.
55. Sections 29, 30 and 31 set out the effect of some of the disciplinary orders available to the Council. These include:
  - the imposition of conditions on a person's registration (and if the conditions aren't complied with, to take further action);
  - to suspend a person's registration for a period of time of up to 2 years (and so prevent them from working as a registered person). At the end of the period of suspension, the person may have to comply with the conditions imposed for a further period;
  - prohibiting a person from being a registered person indefinitely.
56. Section 32 provides a right of appeal against any disciplinary order made by the Council. Appeals must be made within 28 days. The High Court is able to make any order it considers appropriate in relation to an appeal and that the decision of the High Court is final.

## **Information duties – section 33-38**

57. Sections 33 to 38 deals with the retention and supply of information which is relevant to the Council's functions or registering and regulating persons who wish to be registered.
58. Section 33 allows the Welsh Ministers to make regulations requiring the Council to maintain records about various persons. For example, this may include

holding information about people who have applied and been refused registration or people who have been removed from the register on disciplinary grounds.

59. Section 34 allows the Welsh Ministers to provide information about registered persons to the Council, either upon the request of the Council or where the Welsh Ministers consider that it is necessary or desirable for the Council to have that information. Section 34 allows the Secretary of State to provide information to the Council about individual teachers in schools either upon the request of the Council or where the Secretary of State considers that it is necessary or desirable for the Council to have that information.
60. Section 35 imposes a number of information duties on the Council. It facilitates the Welsh Ministers requiring the Council to provide information to them (including about registered persons). It allows a person in respect of whom the Council holds information to be able to access that information.
61. Section 35 also enables the Welsh Ministers to make regulations which require the Council to provide information to specific persons or bodies (and subject to specific conditions). For example, this power could be used to require the Council to provide information to the General Teaching Council for Scotland about a person who is the subject of a disciplinary order.
62. Section 36 requires employers of registered persons who are working in Wales to notify the Council if the registered person is dismissed for unacceptable professional conduct, professional incompetence or conviction for a relevant offence and supply such further information as may be specified in regulations. This enables the Council to review whether it needs to investigate the person's conduct under its disciplinary powers.
63. Section 37 imposes similar duties to section 36 on persons who act as agent for a registered person.
64. Section 38 allows the Welsh Ministers to issue a direction, which may be enforced by an injunction, to any employer or agent of a registered person if the Welsh Ministers consider that a relevant employer or agent has failed or is likely to fail to comply with a duty under section 36 and section 37.

### **Transitional and transitory provision – section 39-40**

65. Section 39 provides for those teachers who are already registered with the GTCW and who have satisfactorily completed a period of induction to be automatically registered as a school teacher as soon as the new register comes into force.
66. It also provides for teachers who are registered, but have not yet satisfactorily completed a period of induction, to be automatically registered as a school teacher on a provisional basis as soon as the new register comes into force.
67. Section 40 ensures that those persons who are prohibited from teaching by a disciplinary order under the Teaching and Higher Education Act 1998 or by

virtue of a direction under section 142 of the Education Act 2002 remain ineligible for registration under the new system.

### **Part 3 - Persons with Learning Difficulties**

#### **Abolition of requirement for approval of independent schools - section 42**

68. This section repeals section 347 of the Education Act 1996.
69. The effect of section 347 as it stands is that an independent school must be approved by the Welsh Ministers if it admits children with statements of special educational needs. The only exception to this is if in an individual case the Welsh Ministers consent to a particular child being admitted to an unapproved independent school.
70. The repeal of section 347 reflects the fact that an independent school's registration is to specify whether children with statements of special educational needs are admitted and, if so, the type of needs for which the school makes provision (for this see section 43).

#### **Registration of independent schools - section 43**

71. This section amends the Education Act 2002.
72. The Education Act 2002 requires independent schools to be registered. The register is kept by the Welsh Ministers, and it is a criminal offence to conduct an independent school that is not registered.
73. The effect of the amendments in subsection (1) of section 43 is to alter the information that needs to be given and maintained on the register for the purpose of a school's registration. An application for a school's registration will now need to specify (amongst other matters) whether the school admits pupils for whom a statement of special education needs is maintained; and, if it does, the type of needs for which the school is organised to make provision. (Subsection (2) makes consequential amendments.)
74. The effect of the amendments in subsection (3) of section 43 is that if, after a school has been registered, there is a change in whether or not it admits pupils of this type, or a change in the type of needs for which it is organised to make provision, the school may be removed from the register unless the change is approved.

#### **Persons with learning difficulties: assessment of post-16 educational and training needs - section 44**

75. This section amends the Learning and Skills Act 2000 by inserting new sections 40A to 40F of that Act.
76. These new sections supersede the existing requirement, at section 140 of the Learning and Skills Act 2000, for the Welsh Ministers to arrange for



assessments of persons to be carried out. In consequence, section 140 is repealed (see Schedule 3).

77. New section 40A of the Learning and Skills Act 2000 requires a local authority, in certain circumstances, to secure an assessment of the post-16 educational and training needs of a person for whom it maintains a statement of special educational needs. (Such an assessment is referred to a “post-16 ETN assessment”) Essentially, the requirement applies where the person is in his or her last year of compulsory schooling, or over compulsory school age, and the authority believes that he or she wishes to undertake some form of post-16 education or training on leaving school.
78. The section also provides that a person may apply to the authority for confirmation of whether or not the authority intends to carry out a post-16 ETN assessment of the person in the current school year.
79. New section 40B of the Learning and Skills Act 2000 confers a discretionary power on a local authority to secure a post-16 ETN assessment of a person who meets certain requirements. These are set out in subsection (2): the person must be resident in the authority’s area, either in the last year of compulsory schooling or over compulsory school age but under 25, have a learning difficulty, and be either receiving post-16 education or training or seem to wish to do so.
80. There is provision in the section (subsections (3) and (4)) for a person to request a post-16 ETN assessment of this type.
81. Subsection (5) confers power on the Welsh Ministers to make regulations detailing circumstances in which a person will or will not be treated as being “ordinarily resident” in an authority’s area for the purposes of this section.
82. New section 40C of the Learning and Skills Act 2000 specifies what must be included in a post-16 ETN assessment of a person.
83. An assessment will need to be recorded in a written report (subsection (1)).
84. It must (subsection (1)) address the person’s educational and training needs, and what is required to meet them, both in terms of the provision of education and/or training, and other forms of support. An example of support of this type might be the provision of a support worker to assist a person while at a further education institution, or some form of learning aid. But transport to or from a place of education or training is not included (subsection (5)).
85. An assessment must also specify whether or not the provision required includes boarding accommodation, or provision made outside the further education sector (subsection (2)). This is required in order to determine the nature of the duties that flow from the findings of the assessment, and whether they fall on the Welsh Ministers or a local authority.
86. Subsection (5) confers power on the Welsh Ministers to deal in regulations with how an assessment is to be carried out. It also enables the Welsh Ministers to make regulations requiring an authority to provide the Welsh Ministers with information about assessments. This information might for instance be needed in order to enable the Welsh Ministers to carry out their duty under section 41 of the Learning and Skills Act 2000 (see section 47).

87. New section 40D of the Learning and Skills Act 2000 allows the Welsh Ministers to make regulations about requests that may be made to an authority under section 40A and 40B, and the notices that must be given in response to a request. Regulations under this section might for instance specify that once a post-16 assessment of a person has been carried out, a request for a further assessment may be made only after a certain period has passed.
88. New section 40E of the Learning and Skills Act 2000 requires a local authority to put in place arrangements for independent dispute resolution services relating to post-16 ETN assessments.
89. New section 40F of the Learning and Skills Act 2000 provides definitions. The effect of subsection (2) is that the discretionary power to secure a post-16 assessment under section 40B applies in relation to a person who is being educated otherwise than at a school.

### **Assessments of post-16 educational and training needs: appeals - section 45**

90. This section amends the Learning and Skills Act 2000 by inserting new sections 40G to 40M of that Act.
91. New section 40G of the Learning and Skills Act 2000 makes provision for appeals in respect of post-16 assessments.
92. An appeal is to be brought to the Special Educational Needs Tribunal for Wales ("SENTW").
93. An appeal may be brought against an authority's failure to secure an assessment. An appeal may also be brought against the contents of an assessment, so far as consisting of a description of the person's educational or training needs, or a description of what is needed to meet those needs.
94. The effect of subsection (3) of new section 40G is that an appeal may be brought against failure to secure an assessment under section 40A –
  - where an authority has failed to secure an assessment in a person's last year of school, or
  - where an authority has notified a person that it does not intend to secure an assessment in the current school year, or
  - where no assessment has been carried out within 6 months of a request for an assessment.
95. This approach is intended to facilitate advance planning by ensuring that a person will not have to wait until he or she has actually left school to appeal to SENTW against a failure to carry out an assessment under section 40A in his or her last year at school.
96. The effect of subsection (6) is that an appeal may be brought against failure to secure an assessment under section 40B either where an authority refuses a request to secure an assessment, or where no assessment has been carried out within 6 months of a request for an assessment.

97. New section 40G of the Learning and Skills Act 2000 sets out the powers of SENTW on determining an appeal.
98. Where an appeal is brought against failure to secure an assessment, SENTW must (unless it dismisses the appeal) order an assessment to be carried out. Where an appeal is brought against the contents of an assessment, SENTW must (unless it dismisses the appeal) either order the contents to be changed, or order a further assessment to be carried out.
99. New section 40G goes on to provide (subsection (4)) that assessments secured as a result of an order made by SENTW on an appeal are to be treated as if they had been secured under section 40A or 40B. This means that a person may appeal against the contents of an assessment carried out by virtue of an order made by SENTW. It also means that the duties under sections 41 and 41A of the Learning and Skills Act 2000 that flow from post-16 ETN assessments under sections 40A and 40B will apply in relation to an assessment of this type also.
100. New section 40I of the Learning and Skills Act 2000 requires an authority to comply with orders made by SENTW on an appeal, and confers power on the Welsh Ministers to make regulations requiring compliance to take place within a certain period.
101. New section 40J of the Learning and Skills Act 2000 makes provision about what is to happen if an authority notifies SENTW that it will not oppose an appeal that has been brought in respect of a post-16 ETN assessment. Essentially, no order will be made by SENTW, but the authority must secure that an assessment of the person is carried out. It will have to do this within a period specified in regulations. Again, an assessment secured by virtue of this section is to be treated as one under section 40A or 40B for the purposes of appeals and the duties that flow from an assessment.
102. New section 40K of the Learning and Skills Act 2000 makes provision about the procedure on appeals. It enables the Welsh Minister to make provision about procedure by way of regulations.
103. New section 40L of the Learning and Skills Act 2000 gives a right of appeal to the Upper Tribunal (but only on a point of law).

**Persons with learning difficulties: case friends and advocacy services - section 46**

104. This section amends the Learning and Skills Act 2000 Act by inserting new sections 40N and 40O of that Act.
105. New section 40N of the Learning and Skills Act 2000 gives the Welsh Ministers power by regulations to provide for case friends. Case friends may make representations on a person's behalf where there is a disagreement or potential disagreement about a post-16 ETN assessment, and may appeal under section 40G on a person's behalf.
106. This section allows the Welsh Ministers to make regulations about case friends.

107. New section 40O of the Learning and Skills Act 2000 requires a local authority to provide independent advocacy services and to refer certain persons who request advocacy services to someone providing those services. Independent advocacy services will advise and help a person who is making, or intending to make, or thinking about making, an appeal to SENTW under section 40G, or who is taking part in, or intending to take part, in dispute resolution arrangements.
108. The section confers power on the Welsh Ministers to make provision about the arrangements.

**Responsibility for providing post-16 education and training for persons with learning difficulties - section 47**

109. This section amends section 41 of the Learning and Skills 2000 Act and inserts a new section 41A.
110. Section 41 of the Learning and Skills Act 2000 as it stands requires the Welsh Ministers, in exercising functions under sections 31, 32 and 34 of the Learning and Skills Act 2000 (these are functions in respect of the provision of education and training for persons aged 16 to 19, and over 19), to have regard to -  
  
the needs of persons with learning difficulties, and  
assessments carried out under section 140 of the Learning and Skills Act 2000.
111. Section 140 is repealed in Schedule 3. So the amendment to section 41(1) of the Learning and Skills Act 2000 in subsection (2) of section 47 removes the existing requirement in section 41 for the Welsh Ministers to have regard to assessments carried out under section 140. The Welsh Ministers will however remain under a duty under section 41, in exercising functions under sections 31, 32 and 34 of the Learning and Skills Act 2000, to have regard to the needs of persons with learning difficulties.
112. Subsection (3) of section 47 further amends section 41 to enable the Welsh Ministers (for the purposes of carrying out their remaining duty under section 41 to have regard to the needs of persons with learning difficulties,) to require a local authority to provide them with copies of assessments under new sections 40A and 40B.
113. Subsection (4) of section 47 repeals section 41(2) and (3) of the Learning and Skills Act 2000.
114. Section 41(2) and (3) of the Learning and Skills Act 2000 require the Welsh Ministers, in certain circumstances, to secure the provision of boarding accommodation for a person with a learning difficulty who is aged under 19, or aged between 19 and 25.
115. The repeal of these provisions reflects the fact that where a person's post-16 ETN assessment specifies that boarding accommodation is required, responsibility for providing that person with what is required will fall on the

relevant local authority (see new section 41A of the Learning and Skills Act 2000).

116. New section 41A of the Learning and Skills Act, as inserted by section 47, makes provision about the responsibilities of a local authority where a post-16 ETN assessment has been carried out.
117. The effect of new section 41A is that, if a person's post-16 ETN assessment specifies that boarding accommodation is required, or that post-16 education or training outside the further education sector is required, responsibility for securing what is needed will fall on the local authority that arranged for the assessment to be carried out. (In other cases, the applicable duty will be the Welsh Ministers' duty under section 41 to have regard to the needs of persons with learning difficulties).
118. The duty imposed on the authority is a duty to make available to the person the provision that is detailed in the assessment.
119. The duty continues to apply until the end of the academic year in which the person reaches 25, provided that the person is ordinarily resident in the authority's area. (An academic year runs from the beginning of August to the end of July, so for instance in a case where a person reaches the age of 25 in January, the duty will continue to apply until the end of the following July.)
120. New section 41A confers power on the Welsh Ministers to make provision in regulations about when a person is and is not to be treated as ordinarily resident in an authority's area for this purpose, and about when the duty under section 41A is to cease to apply. There is also power for the Welsh Ministers to make provision about when further assessments are to be carried out of a person in respect of whom the section 41A duty applies.
121. These powers could for instance be used to provide that the section 41A duty is to cease to apply where a person decides not to engage in post-16 education or training any longer. They could also be used to provide that the duty is to continue to apply for a specified period after a person moves out of an authority's area, and/or that the duty is to cease to apply if a person fails to co-operate in certain circumstances with provision for a further assessment.

#### **Post-16 education and training for persons with learning difficulties: code of practice - section 48**

122. Section 48 amends the Learning and Skills Act 2000 by inserting a new section 41B of that Act.
123. New section 41B the Learning and Skills Act 2000 requires the Welsh Ministers to issue and publish a code of practice about local authorities' functions under or by virtue of sections 40A to 41A. A local authority is required to have regard to the code. On an appeal to SENTW, SENTW may have regard to the code if it considers it is relevant.

#### **Part 4 – Miscellaneous provisions sections 49 and 50**

## **Dates of terms and holidays and times of sessions – section 49**

124. Section 49 amends the Education Act 2002 in respect of Wales by inserting new sections 32A, 32B and 32C.
125. New section 32A of the Education Act 2002 sets out the responsibilities of a local authority or governing body in setting school term and holiday dates for the schools for which they are responsible.
126. In setting dates the local authorities and governing bodies must co-operate and co-ordinate with each to ensure that the dates set are the same (or as close as possible to being the same) for every maintained school in Wales.
127. Once the dates have been determined, the Welsh Ministers are to be notified of the dates following a procedure to be set out in regulations.
128. New section 32B of the Education Act 2002 allows Welsh Ministers to direct a local authority or governing body to determine different school term dates from those set under section 32A. This might occur, for example, where there is a special event on which means that it might be desirable for a particular school or set of schools to be on holiday at a different time. It might also be used where an area has not set term dates in accordance with the rest of Wales.
129. Before making a direction under this section, the Welsh Ministers must carry out appropriate consultation. Regulations may be made about such consultation.
130. New section 32C of the Education Act 2002 is a restatement of the existing provision regarding school session times which relate to Wales in the current section 32 of the Education Act 2002.

## **Her Majesty's Inspectorate of Education and Training in Wales – section 50**

131. Section 50 amends section 19 of the Education Act 2005.
132. As it stands, section 19 provides that Her Majesty's Chief Inspector of Education and Training in Wales (the "Chief Inspector") , and Her Majesty's Inspectors of Education and Training, are appointed by Her Majesty by Order in Council. The Chief Inspector is also removed by Her Majesty by Order in Council.
133. Section 19(6) of the Education Act 2005 provides that the Welsh Ministers are to advise the Secretary of State on any recommendation to be made by Her Majesty as to the exercise of these powers of appointment and removal. However, by virtue of constitutional convention, the First Minister, in his capacity as a Privy Councillor, will in future exercise that advisory role in place of the Secretary of State. The statutory requirement for the Welsh Ministers to advise is therefore removed by repealing section 19(6).

## **Part 5**

### **General Provisions – sections 50 - 56**

134. This Part contains a number of sections which apply to the whole Bill. Several of the sections are self explanatory and so no commentary is provided for them.
135. Section 51 provides that the Bill is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This means, among other things, that any functions conferred on a local authority under this Bill will be an education function (see section 36A of the Education Act 1996) and subject to the Welsh Ministers' various powers of intervention under the School Standards and Organisation (Wales) Act 2013.

### **Ancillary provisions - section 52**

136. The powers conferred on the Welsh Ministers by this section allow them to make such orders as they consider appropriate for the Bill to achieve its purposes and have its full effect.
137. Examples of how this power might be used include:
- making changes to other legislation in consequence of the changes made by this Bill (particularly where the UK parliament is also amending the same legislation at the same time);
  - to provide additional clarity around any of the new procedures;
  - to deal with unforeseen details arising out of the implementation of the new system
138. Where this power is used to amend the text of primary legislation it must be laid before and approved by the Assembly before it comes into force.

### **Orders and Regulations - section 53**

139. This section sets out that regulations and orders under the Bill to be made by statutory instrument and sets out the National Assembly for Wales's procedure in respect of these instruments.
140. It also provides that the Welsh Ministers can make incidental, consequential, supplemental, transitional, transitory and saving provision in connection with those orders. This gives those orders and regulations some flexibility. For example, if a new category of registration is added this power could be used to ensure that appropriate transitional arrangements were in place while the new workers registered).
141. Orders and regulations may make different procedure for different categories of registration. For example, this means that different induction or appraisal requirements can be made for teachers and further education learning support workers.

### **Commencement - section 56**

142. This section deals with when the Bill comes into force.

143. While it is largely self-explanatory, it is worth noting that subsection (2) brings into force section 49 (dates of terms and holidays and times of school sessions) on the day that the Act receives Royal Assent only insofar as it is necessary to allow regulations to be made under the new sections 32A and 32B of the Education Act 2002. This will allow the procedures for consultation etc. to be in place before the new duties on local authorities and governing bodies is brought into force.



**Education Workforce Council - Economic Fee Model**

**Compiled by the Economic and Labour Market Statistics Division**

## **Paper 1 - Proposed distribution of funding for the subsidisation of registration fees**

### **Introduction and assumptions**

Colleagues in the BETS analytical team have looked at, and discussed, 3 possible methods for the distribution of funding for the subsidisation of registration fees to the GTCW.

There were a number of assumptions used across all methods, as outlined here:

- There are 32,000 people registered with the GTCW that are claiming a subsidy
- The cost of registration is £45
- The subsidy provided is £33, leaving £12 to be paid by the member. This can be reduced further by tax relief which brings the actual amount down to around £6.
- The budget for any exemplifications is equal to the number of people registered (32,000), multiplied by the subsidy (£33). I.e. £1.056m
- All calculations are based on average Gross Weekly Earnings of those in positions that will be required to register<sup>17</sup> with the GTCW under the legislation that is due to be implemented. A list of these positions is outlined in table A.

### **Summary of different methods**

#### *Method 1:*

This method provided a distribution based on salary bandings and pension increases from the "Final teacher pension scheme member contribution changes for 2012-13".

#### *Method 2:*

This method used arbitrary salary bandings to allow those earning less than a certain amount to pay nothing towards the registration fee; those earning more than a certain amount to pay the full £45 fee; and those between the two salary brackets to pay contributions on a sliding scale, based on the salary percentile in which they fall.

#### *Method 3:*

This method, again, used arbitrary salary bandings as in method 2 but further arbitrary bandings were created for the salaries between the two outer bandings, allowing between three and six levels of subsidisation, based on the average salary within each band. This method is simpler to apply than the second one.

### **Conclusion**

Statistical colleagues met with one of the heads of the BETS analytical team to discuss the possible distribution methods. Method 2 was eliminated firstly due partly to the impracticalities of distributing the wide ranges of funding levels, but also due to the subjective nature of the distribution. For this reason, method 1 was preferred over method 3, which is similar but less complex to method 2, as method 1 uses an established methodology for the basis of distribution that is already in use in the teaching sector.

### **Preferred method**

#### *Detailed method of distribution:*

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<sup>17</sup> Youth and community workers will be required to register once relevant regulations are made by the Welsh Ministers in exercise of powers conferred by the Education (Wales) Bill when it is enacted

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see table B). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles, multiplied by the total required employee contributions.

*Summary of salary boundaries and cost to employees:*

**Table 1 Exemplification of salary boundaries and cost to employees, based on 2011 and 2012 salaries**

	<i>Cost to each employee (£)</i>	
	2011	2012
Less than £15,000	0.00	0.00
Up to £26,000	7.23	7.16
Up to £32,000	10.84	10.75
Up to £40,000	14.46	14.33
Up to £75,000	19.28	19.10
Up to £112,000	24.10	23.88
£112,000 and over	no employees	no employees

*Summary of shift in costs to employees:*

**Table 2 Number of employees contributing to the registration fee based on 2011 and 2012 salaries, by contribution amount**

	<i>Number of employees</i>	
	2011	2012
<b>Employees paying &lt; £12</b>	14,720	15,040
Employees paying £0	4,160	3,200
Employees paying > £0 and < £12	10,560	11,840
<b>Employees paying &gt; £12</b>	17,280	16,960
Employees paying > £12 and < £45	17,280	16,960
Employees paying £45	0	0
<b>Total Employees</b>	32,000	32,000

**Table 3 Percentage of employees contributing to the registration fee based on 2011 and 2012 salaries, by contribution amount**

	<i>Per Cent</i>	
	2011	2012
<b>Employees paying &lt; £12</b>	46	47
Employees paying £0	13	10
Employees paying > £0 and < £12	33	37
<b>Employees paying &gt; £12</b>	54	53
Employees paying > £12 and < £45	54	53
Employees paying £45	0	0
<b>Total Employees</b>	100	100

Tables 1 to 3 above combined show that, based on the assumed figures, if this distribution was assumed for 2012, 3,200 (10% of) employees would pay no contribution to the registration fee and no-one would pay the full £45. The tables also show that the highest

contribution from an employee would have been £23.88 and 47% of employees would have paid less than on the current distribution.

### **Further considerations**

Further consideration must be given to the rounding of any funding that is to be distributed as this may be constrained by the overall budget amount. The above method could also be altered so that those in the top earnings brackets in Wales pay the full amount – this would release funds for those who earn less.

**Table A: Standard Occupational Classifications of those required to register with the GTCW under the new legislation due to be implemented**

Code	Description
2312	Further education teaching professionals
2314	Secondary education teaching professionals
2315	Primary and nursery education teaching professionals
2316	Special needs education teaching professionals
2317	Senior professionals of educational establishments
2319	Teaching and other educational professionals n.e.c.
3231	Youth and community workers
6125	Teaching assistants
6126	Educational support assistants

Filtered on only those in the public sector

**Table B: Final teacher pension scheme member contribution changes for 2012-13**

Lower Salary	Higher Salary	Contribution Rate in 2012-13 (per cent)	Increase (per cent) (against 6.4 per cent)	Membership	Percentage of Membership
	14,999	6.4	0	1,400	0.2
15,000	25,999	7.0	0.6	116,000	17.1
26,000	31,999	7.3	0.9	117,000	17.2
32,000	39,999	7.6	1.2	271,000	39.6
40,000	74,999	8.0	1.6	172,000	25.2
75,000	111,999	8.4	2.0	4,000	0.6
112,000		8.8	2.4	600	0.1

Source: <http://www.education.gov.uk/inthenews/inthenews/a00200959/final-teacher-pension-scheme-member-contribution-changes-for-2012-13-announced>

## **Paper 2- Proposed distribution of funding for the subsidisation of registration fees**

### **Introduction and assumptions**

A previous paper was put together looking at 3 possible methods for the distribution of funding for the subsidisation of registration fees to the GTCW. Method 1 was considered to be the best option and this paper looks at variations on this method.

A number of assumptions are used across all methods, as outlined here:

- There are 32,000 people registered with the GTCW that are claiming a subsidy
- The cost of registration is £45
- The subsidy provided is £33, leaving £12 to be paid by the member. This can be reduced further by tax relief which brings the actual amount down to around £6.
- The budget for any exemplifications is equal to the number of people registered (32,000), multiplied by the subsidy (£33). I.e. £1.056m
- All calculations are based on average Gross Weekly Earnings of those in positions that will be required to register with the GTCW under the legislation that is due to be implemented. A list of these positions is outlined in table A in the annex.
- All variations are based on salary bandings and pension increases.

### **Details of variations**

#### *Method 1.0 (old method 1):*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see table B in the annex). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles, multiplied by the total required employee contributions.

#### *Method 1.1:*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (table B). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater but less than £75,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles earning less than £75,000, multiplied by the total required employee contributions. Those earning £75,000 and over will pay the full £45.

#### *Method 1.2:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see table C). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles, multiplied by the total required employee contributions.

*Method 1.3:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (table C). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater but less than £75,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles earning less than £75,000, multiplied by the total required employee contributions. Those earning £75,000 and over will pay the full £45.

*Method 1.4:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (table C). Anyone in a percentile earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone who falls in a percentile earning £15,000 annually or greater but less than £45,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution for their percentile as a proportion of the sum of the percentage point increases (over 6.4%) for all percentiles earning less than £45,000, multiplied by the total required employee contributions. Those earning £45,000 and over will pay the full £45.

**Summary of variations****Table 1 Summary of distribution variations of method 1**

Method #	Data year	Salary band that pays £0	Salary band that pays £45
1.0	2012/13	< £15,000	None
1.1	2012/13	< £15,000	> £75,000
1.2	2013/14	< £15,000	None
1.3	2013/14	< £15,000	> £75,000
1.4	2013/14	< £15,000	> £45,000

**Summary of salary boundaries and cost to employees:****Table 2 Exemplification of salary boundaries and cost to employees, based on 2012 salaries, by distribution method**

	<i>Cost to each employee (£)</i>				
	1.0	1.1	1.2	1.3	1.4
Less than £15,000	0.00	0.00	0.00	0.00	0.00
Up to £26,000	7.16	7.04	3.93	3.88	2.87
Up to £32,000	10.75	10.55	9.84	9.70	7.18
Up to £40,000	14.33	14.07	15.74	15.52	11.49
Up to £45,000	19.10	18.76	18.36	18.11	13.40
Up to £75,000	19.10	18.76	24.26	23.93	45.00
Up to £100,000	23.88	45.00	28.85	45.00	45.00
Up to £112,000	23.88	45.00	no employees	no employees	no employees
£112,000 and over	no employees	no employees	no employees	no employees	no employees

**Summary of shift in costs to employees:**

**Table 3 Number of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Numbers</i>				
	1.0	1.1	1.2	1.3	1.4
Employees paying £0	3,200	3,200	3,200	3,200	3,200
Employees paying > £0 and < £12	11,840	11,840	11,840	11,840	20,480
<b>Employees paying &lt; £12</b>	<b>15,040</b>	<b>15,040</b>	<b>15,040</b>	<b>15,040</b>	<b>23,680</b>
Employees paying > £12 and < £45	16,960	16,640	16,960	16,640	4,480
Employees paying £45	0	320	0	320	3,840
<b>Employees paying &gt; £12</b>	<b>16,960</b>	<b>16,960</b>	<b>16,960</b>	<b>16,960</b>	<b>8,320</b>
<b>Total Employees</b>	<b>32,000</b>	<b>32,000</b>	<b>32,000</b>	<b>32,000</b>	<b>32,000</b>

**Table 4 Percentage of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Per cent</i>				
	1.0	1.1	1.2	1.3	1.4
Employees paying £0	10%	10%	10%	10%	10%
Employees paying > £0 and < £12	37%	37%	37%	37%	64%
<b>Employees paying &lt; £12</b>	<b>47%</b>	<b>47%</b>	<b>47%</b>	<b>47%</b>	<b>74%</b>
Employees paying > £12 and < £45	53%	52%	53%	52%	14%
Employees paying £45	0%	1%	0%	1%	12%
<b>Employees paying &gt; £12</b>	<b>53%</b>	<b>53%</b>	<b>53%</b>	<b>53%</b>	<b>26%</b>
<b>Total Employees</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Tables 2 to 4 above combined show that, based on the assumed figures, if this distribution was assumed for 2012, 3,200 (10% of) employees would pay no contribution to the registration fee no matter which distribution is chosen; and between 0 and 3,840 (12% of) employees would pay the full £45. The tables also show that either 47% or 74% of employees would have paid less than on the current distribution, depending on the method of distribution chosen.

### Further considerations

Further consideration must be given to the rounding of any funding that is to be distributed as this may be constrained by the overall budget amount. It would be worth considering a similar distribution using absolute numbers in each salary banding as opposed to using percentiles. This would rectify any problems with salary percentiles crossing the chosen salary bandings. Separate consideration also needs to be given to the treatment of part time staff. These issues will be dealt with in a further paper.



**Table A: Standard Occupational Classifications of those required to register with the GTCW under the new legislation due to be implemented**

Code	Description
2312	Further education teaching professionals
2314	Secondary education teaching professionals
2315	Primary and nursery education teaching professionals
2316	Special needs education teaching professionals
2317	Senior professionals of educational establishments
2319	Teaching and other educational professionals n.e.c.
3231	Youth and community workers
6125	Teaching assistants
6126	Educational support assistants

Filtered on only those in the public sector

**Table B: Final teacher pension scheme member contribution changes for 2012-13**

Lower Salary	Higher Salary	Contribution Rate in 2012-13 (per cent)	Increase (per cent) (against 6.4 per cent)	Membership	Percentage of Membership
	14,999	6.4	0	1,400	0.2
15,000	25,999	7.0	0.6	116,000	17.1
26,000	31,999	7.3	0.9	117,000	17.2
32,000	39,999	7.6	1.2	271,000	39.6
40,000	74,999	8.0	1.6	172,000	25.2
75,000	111,999	8.4	2.0	4,000	0.6
112,000		8.8	2.4	600	0.1

Source: <http://www.education.gov.uk/inthenews/inthenews/a00200959/final-teacher-pension-scheme-member-contribution-changes-for-2012-13-announced>

**Table C: Planned Teachers' Pension Contribution Increase April 2013**

<b>Salary Band</b>	<b>Proposed contribution rate in 2013-14</b>	<b>Contribution rate in 2012-13</b>	<b>Contribution rate pre April 2012</b>
Up to £14,999	6.4%	6.4%	6.4%
£15,000 to £25,999	7.0%	7.0%	6.4%
£26,000 to £31,999	7.9%	7.3%	6.4%
£32,000 to £39,999	8.8%	7.6%	6.4%
£40,000 to £44,999	9.2%	8.0%	6.4%
£45,000 to £74,999	10.1%	8.0%	6.4%
£75,000 to £99,999	10.6%	8.4%	6.4%
£100,000 to £150,999	11.2%	8.8%	6.4%

Source : <http://www.teachers.org.uk/node/17285>

## **Paper 3 - Proposed distribution of funding for the subsidisation of registration fees**

### **Introduction and assumptions**

Two previous papers were put together looking at a number of possible methods for the distribution of funding for the subsidisation of registration fees to the GTCW. Method 1 in the first paper was considered to be the best option and paper 2 looked at variations on this method. This paper looks at some of the further considerations outlined at the end of paper 2 including treatment of part time staff and uses distribution on absolute numbers as opposed to percentiles.

In general, method 1 and its derivations provided distributions based on salary bandings and pension increases from the "Final teacher pension scheme member contribution changes for 2012-13" and the "Planned Teachers' Pension Contribution Increase April 2013" (see tables A and B). These were then applied to salary band percentiles to come up with the different distribution. Those who had no pension increase had to pay no contribution to the GTCW registration fee and, depending on the method, those who earned above a certain amount had to pay the full £45, while those in between played a contribution on a sliding scale.

For the purpose of method 1 and its derivations in paper 2, a number of assumptions were used, as outlined here:

There are 32,000 people registered with the GTCW that are claiming a subsidy

The cost of registration is £45

The subsidy provided is £33, leaving £12 to be paid by the member. This can be reduced further by tax relief which brings the actual amount down to around £6.

The budget for any exemplifications is equal to the number of people registered (32,000), multiplied by the subsidy (£33). I.e. £1.056m

All calculations are based on average Gross Weekly Earnings of those in positions that will be required to register with the GTCW under the legislation that is due to be implemented. A list of these positions is outlined in table C in the annex.

All variations are based on salary bandings and pension increases.

As this paper looks at absolute numbers of employees taken from the Annual Survey of Hours and Earnings (ASHE), we are no longer assuming that there will be 32,000 employees claiming a subsidy, but have used the actual numbers from the ASHE. We have also included part time employees in these calculations (methodological details below) and, therefore, the number of employees included in the distribution is around 75,000.

As a result of this, if subsidisation of the registration fee is expected to be kept at the same level, the budget will need to increase significantly to somewhere near £2.5m. Because of this, we have dealt with exemplifications in three different ways in this paper. The first section looks at increasing the budget to the required amount to keep funding at the same level, the second section looks at charging those that earn higher salaries more than the cost of the license in order to subsidise those at the lower end of the salary scale and the third section looks at cutting the funding per person to stick within the £1.056m assumed budget.

To arrive at the number of employees in each salary bracket, hourly earnings have been multiplied by 32.4 hours per week and then multiplied by 52 weeks (this treatment is the same for both full and part time employees). The 32.4 hours was calculated by dividing the number of contracted hours (1,265) by the period of days that these must be worked over (195), assuming a 5 day week<sup>18</sup>. A split of employees into part time and full time by

<sup>18</sup> <http://www.tes.co.uk/article.aspx?storycode=6043075>

occupation can be found in table D. Table E shows the distribution of earnings by occupation based on full-time salaries (so part-time employees have been pro-rated, to full-time).

### **Section 1: Increased budget**

The following distribution methods assume that the budget will be increased to allow a level of funding equivalent to that of £33 per employee. Based on 2011 figures, the budget would need to increase from £1.056m to £2.503m and, based on 2012 figures, it would need to increase to £2.393m.

#### *Method 1.0a (old method 1):*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for all employees, multiplied by the total required employee contributions.

#### *Method 1.1a:*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater but less than £75,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for those earning less than £75,000, multiplied by the total required employee contributions. Those earning £75,000 and over will pay the full £45.

#### *Method 1.2a:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%), multiplied by the total required employee contributions.

#### *Method 1.3a:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater but less than £75,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for those earning less than £75,000, multiplied by the total required employee contributions. Those earning £75,000 and over will pay the full £45.

#### *Method 1.4a:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their

license. Anyone earning £15,000 annually or greater but less than £45,000, will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for those earning less than £45,000, multiplied by the total required employee contributions. Those earning £45,000 and over will pay the full £45.

### **Summary of variations**

**Table 1a Summary of distribution variations of method 1**

Method #	Data year	Salary band that pays £0	Salary band that pays £45
1.0	2012/13	< £15,000	None
1.1	2012/13	< £15,000	> £75,000
1.2	2013/14	< £15,000	None
1.3	2013/14	< £15,000	> £75,000
1.4	2013/14	< £15,000	> £45,000

### **Summary of salary boundaries and cost to employees:**

**Table 2a Exemplification of salary boundaries and cost to employees, based on 2012 salaries, by distribution method**

	<i>Cost to each employee (£)</i>				
	1.0a	1.1a	1.2a	1.3a	1.4a
Less than £15,000	0.00	0.00	0.00	0.00	0.00
Up to £26,000	8.04	7.95	4.30	4.26	2.44
Up to £32,000	12.07	11.92	10.74	10.65	6.09
Up to £40,000	16.09	15.90	17.18	17.03	9.75
Up to £45,000	21.45	21.20	20.05	19.87	11.38
Up to £75,000	21.45	21.20	26.49	26.26	45.00
Up to £100,000	26.81	45.00	31.50	45.00	45.00
Up to £112,000	26.81	45.00	No employees	No employees	No employees
£112,000 and over	No employees	No employees	No employees	No employees	No employees

### **Summary of shift in costs to employees:**

**Table 3a Number of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Numbers</i>				
	1.0a	1.1a	1.2a	1.3a	1.4a
Employees paying £0	16,000	16,000	16,000	16,000	16,000
Employees paying > £0 and < £12	15,200	22,700	22,700	22,700	43,900
<b>Employees paying &lt; £12</b>	<b>31,200</b>	<b>38,700</b>	<b>38,700</b>	<b>38,700</b>	<b>59,900</b>
Employees paying > £12 and < £45	41,300	33,300	33,900	33,300	0
Employees paying £45	0	600	0	600	12,600
<b>Employees paying &gt; £12</b>	<b>41,300</b>	<b>33,900</b>	<b>33,900</b>	<b>33,900</b>	<b>12,600</b>
<b>Total Employees</b>	<b>72,500</b>	<b>72,500</b>	<b>72,500</b>	<b>72,500</b>	<b>72,500</b>

**Table 4a Percentage of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	Per cent				
	1.0a	1.1a	1.2a	1.3a	1.4a
Employees paying £0	22%	22%	22%	22%	22%
Employees paying > £0 and < £12	21%	31%	31%	31%	61%
<b>Employees paying &lt; £12</b>	<b>43%</b>	<b>53%</b>	<b>53%</b>	<b>53%</b>	<b>83%</b>
Employees paying > £12 and < £45	57%	46%	47%	46%	0%
Employees paying £45	0%	1%	0%	1%	17%
<b>Employees paying &gt; £12</b>	<b>57%</b>	<b>47%</b>	<b>47%</b>	<b>47%</b>	<b>17%</b>
<b>Total Employees</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Tables 2a to 4a above combined show that, based on the assumed figures, if this distribution was assumed for 2012, 16,000 (22% of) employees would pay no contribution to the registration fee no matter which distribution is chosen; and between 0 and 12,600 (17% of) employees would pay the full £45. The tables also show that either 43%, 53% or 83% of employees would have paid less than on the current distribution, depending on the method of distribution chosen.

## Section 2: Static budget with no ceiling

The following distribution methods assume that the budget remains at £1.056m and that there will be no 'ceiling' to the employee contributions, which may result in those at the higher end of the pay scale subsidising those at the lower end. This method may be more difficult to administer as it would involve collecting money and then redistributing it.

### *Method 1.0b (old method 1):*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for all employees, multiplied by the total required employee contributions to keep the budget at £1.056m.

### *Method 1.1b:*

This method has not been replicated in this case as those earning greater than £75,000 are already paying greater than a £45 contribution in method 1.0b.

### *Method 1.2b:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%), multiplied by the total required employee contributions to keep the budget at £1.056m.

### *Method 1.3b:*

This method has not been replicated in this case as those earning greater than £75,000 are already paying greater than a £45 contribution in method 1.2b.

### *Method 1.4b:*

This method has not been replicated in this case as those earning greater than £45,000 are already paying greater than a £45 contribution in method 1.2b.

**Summary of salary boundaries and cost to employees:**

**Table 2b Exemplification of salary boundaries and cost to employees, based on 2012 salaries, by distribution method**

	<i>Cost to each employee (£)</i>	
	1.0b	1.2b
Less than £15,000	0.00	0.00
Up to £26,000	20.40	10.90
Up to £32,000	30.61	27.24
Up to £40,000	40.81	43.59
Up to £45,000	54.41	50.85
Up to £75,000	54.41	67.20
Up to £100,000	68.01	79.91
Up to £112,000	68.01	No employees
£112,000 and over	No employees	No employees

**Summary of shift in costs to employees:**

**Table 3b Number of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Numbers</i>	
	1.0b	1.2b
Employees paying £0	16,000	16,000
Employees paying > £0 and < £12	0	15,200
<b>Employees paying &lt; £12</b>	<b>16,000</b>	<b>31,200</b>
Employees paying > £12 and <= £45	36,000	20,800
Employees paying > £45	20,500	20,500
<b>Employees paying &gt; £12</b>	<b>56,500</b>	<b>41,300</b>
<b>Total Employees</b>	<b>72,500</b>	<b>72,500</b>

**Table 4b Percentage of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Per cent</i>	
	1.0b	1.2b
Employees paying £0	22%	22%
Employees paying > £0 and < £12	0%	21%
<b>Employees paying &lt; £12</b>	<b>22%</b>	<b>43%</b>
Employees paying > £12 and <= £45	50%	29%
Employees paying > £45	28%	28%
<b>Employees paying &gt; £12</b>	<b>78%</b>	<b>57%</b>
<b>Total Employees</b>	<b>100%</b>	<b>100%</b>

Tables 2b to 4b above combined show that, based on the assumed figures, if this distribution was assumed for 2012, 16,000 (22% of) employees would pay no contribution to the registration fee no matter which distribution is chosen; and 20,500 (28% of) employees would pay more than the full £45, with the largest contribution being £79.91 for those earning over £75,000 in distribution 1.2b. The tables also show that either 22% or 43% of employees would have paid less than on the current distribution, depending on the method of distribution chosen.

### Section 3: Static budget with £45 ceiling

The following distribution methods assume that the budget remains at £1.056m and that there will be a 'ceiling' of £45 to the employee contributions, which may result in more employees paying the full £45.

#### *Method 1.0c and 1.1c (old method 1):*

Salary bandings have been created from the "Final teacher pension scheme member contribution changes for 2012-13" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%) for all employees, multiplied by the total required employee contributions to keep the budget at £1.056m. If employees in a salary banding are above the ceiling of £45, they will pay a contribution equal to that of the ceiling and this extra funding will be met by redistribution amongst the lower salary bandings. This will continue until no-one is required to pay more than £45. A number of iterations may be necessary to achieve this (in this case, 3, causing everyone earning over £32,000 to pay the full amount).

#### *Method 1.2c, 1.3c and 1.4c:*

Salary bandings have been created from the "Planned Teachers' Pension Contribution Increase April 2013" (see annex 2.1). Anyone earning less than £15,000 annually (corresponding to a 6.4% increase in pension contributions) pays no contribution to their license. Anyone earning £15,000 annually or greater will pay a contribution equal to the percentage point increase over 6.4% in their pension contribution as a proportion of the sum of all the percentage point increases (over 6.4%), multiplied by the total required employee contributions to keep the budget at £1.056m. If employees in a salary banding are above the ceiling of £45, they will pay a contribution equal to that of the ceiling and this extra funding will be met by redistribution amongst the lower salary bandings. This will continue until no-one is required to pay more than £45. A number of iterations may be necessary to achieve this (in this case, 4, causing everyone earning over £26,000 to pay the full amount).

#### **Summary of salary boundaries and cost to employees:**

**Table 2c Exemplification of salary boundaries and cost to employees, based on 2012 salaries, by distribution method**

	<i>Cost to each employee (£)</i>	
	<i>1.0c, 1.1c</i>	<i>1.2c, 1.3c, 1.4c</i>
Less than £15,000	0.00	0.00
Up to £26,000	25.88	22.85
Up to £32,000	38.82	45.00
Up to £40,000	45.00	45.00
Up to £45,000	45.00	45.00
Up to £75,000	45.00	45.00
Up to £100,000	45.00	45.00
Up to £112,000	45.00	No employees
£112,000 and over	No employees	No employees

#### **Summary of shift in costs to employees:**

**Table 3c Number of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**



	<i>Numbers</i>	
	1.0c, 1.1c	1.2c, 1.3c, 1.4c
Employees paying £0	16,000	16,000
Employees paying > £0 and < £12	0	0
<b>Employees paying &lt; £12</b>	<b>16,000</b>	<b>16,000</b>
Employees paying > £12 and < £45	22,700	15,200
Employees paying £45	33,900	41,300
<b>Employees paying &gt; £12</b>	<b>56,500</b>	<b>56,500</b>
<b>Total Employees</b>	<b>72,500</b>	<b>72,500</b>

**Table 4c Percentage of employees contributing to the registration fee based on 2012 salaries, by distribution method and contribution amount**

	<i>Per cent</i>	
	1.0c, 1.1c	1.2c, 1.3c, 1.4c
Employees paying £0	22%	22%
Employees paying > £0 and < £12	0%	0%
<b>Employees paying &lt; £12</b>	<b>22%</b>	<b>22%</b>
Employees paying > £12 and < £45	31%	21%
Employees paying £45	47%	57%
<b>Employees paying &gt; £12</b>	<b>78%</b>	<b>78%</b>
<b>Total Employees</b>	<b>100%</b>	<b>100%</b>

Tables 2c to 4c above combined show that, based on the assumed figures, if this distribution was assumed for 2012, 16,000 (22% of) employees would pay no contribution to the registration fee no matter which distribution is chosen; and either 33,900 or 41,300 (47% or 57% of) employees would pay the full £45. The tables also show that 22% of employees would have paid less than on the current distribution.

### Further considerations

Further consideration must be given to the rounding of any funding that is to be distributed as this may be constrained by the overall budget amount.

**Annex 2.1****Table A: Final teacher pension scheme member contribution changes for 2012-13**

Lower Salary	Higher Salary	Contribution Rate in 2012-13 (per cent)	Increase (per cent) (against 6.4 per cent)	Membership	Percentage of Membership
	14,999	6.4	0	1,400	0.2
15,000	25,999	7.0	0.6	116,000	17.1
26,000	31,999	7.3	0.9	117,000	17.2
32,000	39,999	7.6	1.2	271,000	39.6
40,000	74,999	8.0	1.6	172,000	25.2
75,000	111,999	8.4	2.0	4,000	0.6
112,000		8.8	2.4	600	0.1

Source: <http://www.education.gov.uk/inthenews/inthenews/a00200959/final-teacher-pension-scheme-member-contribution-changes-for-2012-13-announced>

**Table B: Planned Teachers' Pension Contribution Increase April 2013**

Salary Band	Proposed contribution rate in 2013-14	Contribution rate in 2012-13	Contribution rate pre April 2012
Up to £14,999	6.4%	6.4%	6.4%
£15,000 to £25,999	7.0%	7.0%	6.4%
£26,000 to £31,999	7.9%	7.3%	6.4%
£32,000 to £39,999	8.8%	7.6%	6.4%
£40,000 to £44,999	9.2%	8.0%	6.4%
£45,000 to £74,999	10.1%	8.0%	6.4%
£75,000 to £99,999	10.6%	8.4%	6.4%
£100,000 to £150,999	11.2%	8.8%	6.4%

Source : <http://www.teachers.org.uk/node/17285>

## Annex 2.1

**Table C: Standard Occupational Classifications of those required to register with the GTCW under the new legislation due to be implemented**

Code	Description
2312	Further education teaching professionals
2314	Secondary education teaching professionals
2315	Primary and nursery education teaching professionals
2316	Special needs education teaching professionals
2317	Senior professionals of educational establishments
2319	Teaching and other educational professionals n.e.c.
3231	Youth and community workers
6125	Teaching assistants
6126	Educational support assistants

Filtered on only those in the public sector

**Table D: Number of employees to register with the GTCW under the new legislation due to be implemented by Standard Occupational Classification, year and part time/full time split**

Code	Description	Full-Time	Part-Time	Total
2312	Further education teaching professionals	*	*	4,200
2314	Secondary education teaching professionals	16,400	2,600	19,000
2315	Primary and nursery education teaching professionals	12,200	4,600	16,900
2316	Special needs education teaching professionals	*	*	1,300
2317	Senior professionals of educational establishments	*	*	3,900
2319	Teaching and other educational professionals n.e.c.	1,300	2,500	3,800
3231	Youth and community workers	*	*	2,600
6125	Teaching assistants	7,200	7,700	14,900
6126	Educational support assistants	3,300	2,800	6,100
<b>Total</b>		<b>49,900</b>	<b>22,700</b>	<b>72,500</b>

Source: Annual Survey of Hours and Earnings, ONS

Note: Filtered on only those in the public sector

Data rounded to the nearest 100

Denotes data item too unreliable or based on small sample sizes, so is suppressed. Secondary suppression also applied.

Table E: Distribution of earnings by occupation (full-time based earnings)

*Notes*

		Further education teaching professionals	Secondary education teaching professionals	Primary and nursery education teaching professionals	Special needs education teaching professionals	Senior professionals of educational establishments	Teaching and other educational professionals nec	Youth and community workers	Teaching assistants	Educational support assistants	Total
Less than	£15,000	0	0	0	0	0	*	*	10,600	4,500	16,000
Up to	£26,000	1,400	1,500	2,700	*	*	2,000	1,800	4,100	1,400	15,200
Up to	£32,000	2,000	2,300	2,200	0	*	*	*	*	0	7,500
Up to	£40,000	*	5,500	5,800	*	*	*	0	0	*	13,300
Up to	£45,000	0	3,800	2,700	*	*	*	0	0	0	7,900
Up to	£75,000	0	5,900	3,500	0	2,300	*	0	0	0	12,100
Up to	£100,000	0	0	0	0	*	0	0	0	0	*
Up to	£112,000	0	0	0	0	0	0	0	0	0	0
£112,000 and over		0	0	0	0	0	0	0	0	0	0
Total		4,200	19,000	16,900	1,300	3,900	3,800	2,600	14,900	6,100	72,500

Note: Filtered on only those in the public sector

Data rounded to the nearest 100

Denotes data item too unreliable or based on small sample sizes, so is suppressed. Secondary suppression also applied.