

Education (Wales) Measure 2011

Explanatory Memorandum to the proposed Education (Wales) Measure 2011

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills of the Welsh Assembly Government and is laid before the National Assembly for Wales. It has been amended in accordance with a resolution of Legislation Committee no.5 under standing order 23.40, to reflect amendments made to the Measure at Stage 2.

Member's Declaration

In my view the provisions of the Education (Wales) Proposed Measure 2011, introduced by me on the 6th of December 2010 and amended after Stage 2 scrutiny by the National Assembly for Wales would be within the legislative competence of the National Assembly for Wales.

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Minister for Children, Education and Lifelong Learning
Assembly Member in charge of the Proposed Measure

22 March 2011

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PART 1

1. Description

1.1 The proposed Measure will put in place powers and duties to make collaboration commonplace in the education system, to improve school governance and to simplify the planning of school places in Wales.

1.2 It complements and supports the work that has been undertaken within the Department for Children, Education, Lifelong Learning and Skills on the Front Line Resources Review, in that it will help to embed collaborative models of service planning and delivery and support performance improvement within the education system in Wales.

1.3 The proposals will improve school performance and are in the spirit of the School Effectiveness Framework. They address recommendations made by the Enterprise and Learning Committee's 2009 report on the role of school governors.

1.4 The proposed Measure makes provision to:

- drive collaboration between local authorities, governing bodies of maintained schools and Further Education Institutions ("FEIs");
- give local authorities a power to establish a federation of schools;
- train school governors and to improve clerking of governing bodies;
- prevent schools in the future from changing category so as to become foundation schools and to prevent new foundation schools being established.

2. Legislative background

2.1 In respect of powers to require collaboration between local authorities, school governing bodies and governing bodies of FEIs, the National Assembly for Wales ("the Assembly") has the competence under Matters 5.2B, 5.2C, 5.12 and 5.13 to effect the planned changes:

Matter 5.2B

Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.

Matter 5.2C

The following activities by persons or bodies with functions relating to schools maintained by local authorities—

(a) establishment of bodies to do all or any of the following—

- (i) carry out activities relating to education or training,*
- (ii) exercise education functions on behalf of local authorities;*
- (b) involvement with bodies mentioned in paragraph (a).*

Matter 5.12

Provision for and in connection with the establishment and dissolution of –

- (a) institutions concerned with the provision of further education, and*
- (b) bodies that conduct such institutions,*

Including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about –

- (a) the conduct and function of such institutions;*
- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;*
- (c) property held by any person for the provision of such an institution;*
- (d) the governance and staff of such institutions.*

Matter 5.13

Provision for and in connection with securing collaboration –

- (a) between bodies that conduct institutions concerned with the provision of further education, or*
- (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,*

including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

39. In respect of powers to repeal section 347 of the EA 1996, the National Assembly for Wales has the competence, under Matter 5.17, to effect the planned changes.

2.2 In relation to school governance, competence is under Matter 5.2A:

Matter 5.2A

Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.

2.3. In respect of the provisions preventing maintained schools changing category to become foundation schools and preventing the establishment of new foundation schools, the Assembly has the competence to make a Measure that would allow provisions around the category of 'foundation schools' under matters 5.1 and 5.2:

Matter 5.1

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

General Position

2.4 Current primary legislation for school governance is set out mainly in the Education Act 2002 (the EA 2002) and the Education and Inspections Act 2006 (the E&IA 2006) and deals with topics which include the following:

- the constitution, functions and membership of governing bodies (principally sections 19, 20, and 34 of EA 2002);
- the means by which governing bodies may collaborate or federate, including collaboration with FEIs (sections 24-26 EA 2002 and section 166 of the E&I Act 2006);
- the governing body's responsibility for the conduct of the school and to promote high standards (sections 21 and 29B EA 2002 and section 38 of the E&I Act 2006);
- powers to provide community facilities; to control school premises; and to determine session times; (sections 27-28; 31; 32; EA 2002 respectively); and
- the provision of training and support for governors (section 22 EA 2002) and a regulation making power in respect of a clerk to the governing body (section 23 EA 2002).

2.5 A local authority is defined in section 579(1) of the EA 1996 to mean a county council in Wales or a county borough, and has many functions in relation to education in its area. Its key duty is in section 13 of the EA 1996 which provides that it contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education is available to meet the needs of the population of its

area. A local authority currently has a number of powers to make arrangements for the joint discharge of its functions (including its education functions) albeit these are limited. These are as follows:

- section 2 of the Local Government Act 2000. This enables a LA to do anything which it considers likely to achieve a number of prescribed objectives;
- section 19 of the Local Government Act 2000. This allows local authorities to arrange for the executive of another local authority to discharge its functions on its behalf;
- section 1 of the Local Authorities (Goods and Services) Act 1970. This allows a local authority to enter into an agreement with another local authority or body for certain specific prescribed purposes, such as the supply of goods and materials;
- section 25 of the Local Government (Wales) Act 1994. This allows one local authority to enter into an agreement with another to supply services needed to discharge its functions;
- section 70 of the Deregulation Contracting-Out Act 1994. This allows a local authority function to be contracted-out and exercised by another person subject to an order of the Secretary of State;
- Part VI of the Local Government Act 1972. This Part also makes provision allowing a local authority to make arrangements for the discharge of its functions by another local authority by a committee of it;
- the Local Government (Wales) Measure 2009. Part 1 of this Measure places a duty on local authorities to consider whether the exercise of its powers of collaboration in that Measure would assist it in complying with its duties under that Measure, and if it would to cause those powers to be exercised.

2.6 FEIs in Wales are institutions conducted by further education corporations (“FECs”) and designated institutions.

2.7 FECs are established by order of the Secretary of State under section 15 of the Further and Higher Education Act 1992 (“FHEA 1992”) or by order of the Welsh Ministers under section 16 of that Act. There are currently 16 FECs in Wales.

2.8 The principal powers of an FEC are set out in section 18 of the FHEA1992. A FEC may: provide further and higher education; provide secondary education suitable to the requirements of persons who have attained the age of 14; provide secondary education; participate in the provision of secondary education at a school; and supply goods and services in connection with their provision of education.

2.9 Every FEC must have an instrument and articles of government. The instrument and article of government must comply with the requirements of Schedule 4 to the FHEA 1992.

2.10 The governing bodies of a designated institution will have the powers and functions set out in a governing instrument. Provisions about the government and conduct of designated institutions are set out in sections 29 - 31 of the FHEA 1992.

2.11 For the provisions around foundation schools, Section 20 of the SSFA 1998 provides for the following categories of maintained school in Wales:

- Community schools
- Foundation schools
- Voluntary schools, comprising
 - (i) voluntary aided schools, and
 - (ii) voluntary controlled schools
- community special schools
- foundation special schools

2.12 Section 28 of and Schedule 6 to the SSFA 1998 provide for the establishment of new schools, including foundation schools, by either a local authority or other promoter.

2.13 Section 35 of and Schedule 8 to the SSFA 1998 make provision for a maintained school in Wales which is within the categories set out in section 20 to change category to another category amongst those set out in that paragraph. In addition, section 113A and Schedule 7A of the Learning and Skills Act 2000, make provision allowing the Welsh Ministers to make proposals in connection with school organisation in certain circumstances.

3. Purpose & intended effect of the legislation

3.1 The broad purposes of this legislation are set out in section 1 of this memorandum. A more detailed description of the provisions is set out in the Explanatory Notes at Part 3.

3.2 The Measure aims to further key policy objectives for the Welsh Assembly Government, namely:

- making improvements to school governance, prompted by the Enterprise and Learning Committee's 2009 report;
- driving a culture of collaborative working in the education system, with joint endeavours becoming more common and best practice shared (The School Effectiveness Framework (SEF)); and
- making resource use in the education system more efficient and effective (The Front Line Resources Review (FLRR)).

3.3 Early in 2010, the Welsh Assembly Government sought legislative competence for the Assembly on school governance matters in order that the Assembly may make a Measure to strengthen and adapt school governance arrangements to achieve the more effective delivery of key policies such as the 14-19 Learning Pathways, the Transformation Agenda and the SEF.

3.4 The delivery of these policies relies on education providers working together collaboratively to raise standards and to improve outcomes for learners. Whilst the main aim of the 14-19 Learning Pathways and the Transformation Agenda is to improve learning opportunities for post-14 learners by providing a wide based curriculum which gives pupils better choices and opportunities, the SEF is the overarching policy framework that focuses on school age children.

3.5 The SEF seeks to create a better way of working in education. It aims to create a culture in which collaboration is normal, not the exception, and that best practice is widely spread and copied. These behaviours will replace institutional self interest.

3.6 The focus will be on achieving the best outcomes for every learner in Wales, with particular emphasis on literacy, numeracy and overcoming the pernicious effects of poverty on learners' chances.

3.7 A number of schools, FEIs and local authorities are already working collaboratively to achieve better planning of curriculum and services and achieve efficiencies in resources, which is important in the current climate when public finances and resources are being stretched. It is important that education providers continue with this work to deliver the Welsh Assembly Government's policies, but they must also consider the bigger picture and explore what other opportunities and benefits can be offered to learners that will give young people in Wales the best possible start.

3.8 On 18th May 2010 the Minister for Children, Education and Lifelong Learning published a report from PricewaterhouseCoopers on the cost of administering education across Wales. To provide pace and direction to the implementation of the report's recommendations, he has established a Front Line Resources Review Programme Board and a number of working groups to explore and take forward specific areas of opportunity.

3.9 The objective of the review is to ensure that the education system is structured in a way that will deliver sustained improvement in learner attainment across Wales. Driving more resource to the front line is critical to that, as is maximising the opportunities for collaborative working to make the best use of available resources.

3.10 Specifically, the proposed Measure has the following policy objectives:

a) Collaboration

3.11 It aims to make collaborative working much more commonplace be that amongst school governing bodies and / or between them and FEI governing bodies; or between any governing body and local authorities. Rather than being exceptional, the expectation is that collaboration will become a natural and more frequent feature of the education system. The Measure does this by placing a duty on schools/ FEIs and local authorities to work collaboratively

to achieve the most effective and efficient use of public resources in relation to education and training up to the age of 19.

b) Federation of maintained schools

3.12 Experience in England suggests that school governing body federation can be beneficial in terms of improving the quality and range of provision and that it can also make schools more efficient financially. This is because the united governance structure that federation puts in place leads naturally to synergies between schools. It stimulates joint working between school staff and shared use of resources. School federation could also strengthen school governor recruitment and retention, where governing bodies struggle to attract or retain sufficient governors or where governors lack the skills to be effective. Whilst regulations exist in Wales that permit governing bodies to voluntarily federate, the process may daunt governing bodies. The Welsh Assembly Government wishes to make federation more common place, especially amongst small schools. But to achieve that goal the Welsh Assembly Government thinks that local authorities will need to lead changes. The current law does not permit this, so the Measure changes it to provide local authorities with power to propose and create a school federation. The Welsh Assembly Government is conscious that exercising this power would generate much work for local authorities which maintain many small schools. The Measure includes a provision to address this which would allow the Welsh Ministers to make regulations making it easier for a local authority to propose federation of schools with fewer than a specified number of pupils (to be prescribed in an Order). It is anticipated that this provision would be used should a local authority make a case for the Welsh Ministers to use it and the Ministers thought that the authority's proposals merited it. The Measure also provides that the Welsh Ministers may direct a local authority, a governing body or a federation to provide for a federation of any maintained school that is of concern, regardless of size.

c) School Governance

3.13 To contribute to increasing the effectiveness of maintained school governing bodies by effecting improvements in governor training and the clerking of governing bodies. This would be achieved by introducing good quality mandatory training for governors in prescribed areas – initially it is intended that this will be induction training for new governors; training for chairs of governing bodies and training for all governors on using and understanding data. Improving the quality of clerks to governing bodies by requiring local authorities to offer a clerking service to its schools, offering specific training for clerks and making clerk training mandatory would also lead to improvements in governing body effectiveness. Well trained governors and good clerking are pre-requisites for good governance, which in turn is fundamental to raising school performance.

d) Foundation Schools

3.14 To avoid further complexity in the school admission system in Wales and to maintain local authorities' control on planning schools places by preventing schools from changing category so as to become foundation schools, and to prevent further foundation schools being established.

Proposals for a Proposed Education (Wales) Measure

3.15 A more detailed description of the provisions is set out in the Explanatory Notes which accompany the proposed Measure. The following paragraphs provide a summary.

a) Collaboration

3.16 The Measure places a duty on school governing bodies, FEI governing bodies and local authorities to consider how, when exercising functions, they might work collaboratively with other governing bodies, in a way which would further the objective of the effective and efficient use of its resources. Collaboration should be undertaken where it would achieve the more efficient and effective use of resources.

b) Federation.

3.17 The Measure gives local authorities a power to propose and secure a federation of two or more school governing bodies. Local authorities would have to act in accordance with regulations and have to have regard to statutory guidance in the exercise of this power. The Measure makes provision for consultation and includes an enabling power to regulate for additional provisions. Regulations and guidance would set out criteria that the local authority would need to consider before proposing federation. Examples might include where the local authority considers and are able to evidence that it would be more advantageous to learners than alternative arrangements for governance or organisation.

3.18 The Measure provides a power for the Welsh Ministers to make regulations relating to the procedure for federation and would allow for a streamlined consultation procedure for the federation of small schools. A small school would be defined by way of an Order which would set out the numbers of registered pupils at a school, with the policy aim that it would make it more straight forward for local authorities to federate the governing bodies of small schools. The maintaining local authority would decide which school was federated with which. The Measure provides a power for the Welsh Ministers to direct the federation of schools causing concern.

c) School Governance

3.19 A local authority will be duty bound to offer to all its maintained schools the provision of a suitably qualified and trained Clerk to the governing body.

3.20 A local authority will be under a duty to provide prescribed training to governors.

3.21 There will be a duty on local authorities to offer training to school governing body clerks.

3.22 The Welsh Ministers will have a power to set out the details of the training to be offered to clerks, and the details of the training for governors.

d) *Foundation Schools*

3.23 Amending sections 28 and 35 and Schedules 6 and 8 of the School Standards and Framework Act (SSFA 1998), and also to section 113A and Schedule 7A of the Learning and Skills Act 2000, so that in Wales, no new foundation schools may be established and so that existing maintained schools cannot change category to become foundation schools.

Issues addressed by the Proposed Measure

a) **Collaboration**

3.24 School and FEI governing bodies may already choose to collaborate under the current law by setting up joint committees. Establishing formal governance and management arrangements through collaboration allows these institutions to unite the planning and delivery of learning provision across institutions in an area.

3.25 As regards school governing bodies working collaboratively with other school governing bodies, local authorities have reported that as far as they are aware schools are not proactively using the Collaboration between Maintained School (Wales) Regulations 2008 to form joint committees to explore the wider benefits that can be achieved by working together in this way.

3.26 For schools and FEIs, the existing Collaboration Arrangements (Maintained Schools and Further Education Bodies) (Wales) Regulations 2008 are enabling. Governing bodies of these institutions will remain free to continue with existing collaboration arrangements if they wish.

3.27 Some school/FEI collaboration and some school/school collaboration is currently taking place to deliver the Learning and Skills (Wales) Measure 2009 and the Transformation Agenda, which complements that Measure. Much of this takes place on an informal basis by agreement of head teachers and principals. The Measure aims to strengthen and extend the formal ways in which working together can be placed at the centre of the governance of education. Doing this makes collaboration an integral part of the system with the intention that it becomes natural rather than an add-on. The Assembly Government's Transformation Agenda similarly aims to reduce unnecessary duplication of provision and encourage higher quality learning and teaching; it applies to all post-16 provision. These aims cannot be realised by any single provider. Consequently providers are expected to establish effective collaboration to underpin 14-19 entitlement and maximise the chances of successful learner outcomes. Local authorities are already under a duty to

consider whether the exercise of its powers in that Measure would assist it to comply with its duty to seek the continuous improvement in the use of its functions, and if it would cause those powers to be exercised (Part 1 of the Local Government (Wales) Measure 2009). Its powers of collaboration include the joint discharge of its functions with other local authorities, but do not include the joint discharge of those functions with school and FEI governing bodies.

3.28 The proposed Measure seeks to strengthen these arrangements and make collaborative working more robust by placing a duty on schools, FEIs and local authorities to consider whether to collaborate.

b) Federation of schools

3.29 The Assembly Government thinks that school federation has much potential. But this is unlikely to be realised unless the process is improved by allowing local authorities to play a role. It is complicated, potentially burdensome and so off-putting for governing bodies alone to make all the running. Sensibly planned federation should take account of the needs of the school in question and the wider education context of an area. The Assembly Government has concluded that the current law is too restrictive. Local authorities need to have the power to propose and make federations. Otherwise it is unlikely to become a common feature of the education system.

c) School Governance

3.30 Whilst the Enterprise and Learning Committee report in 2009 on the role of school governors highlighted the excellent work already being done by governors, it also highlighted some areas where improvements were possible. A number of recommendations were made, in particular around governor training and support and the clerking of governing body meetings. The report identified variation in practice across Wales in terms of what local authorities provide in these areas. It also concluded that the quality of clerking was likely to be higher when the clerk was a local authority person trained in school governance matters. It was further stated that well trained governors and good clerking are pre-requisites for good governance, which in turn is fundamental to school performance.

3.31 The proposed Measure seeks to address these concerns by placing a duty on local authorities to offer maintained schools a clerking service and offer clerk training. It also gives the Welsh Ministers a power to prescribe the content of the training for clerks.

3.32 To address the Enterprise and Learning Committee's concerns on the quality and breadth of governor training and its take up by governors, the proposed Measure would provide the Welsh Ministers with a power to prescribe mandatory training and to determine the content of that training.

d) Foundation Schools

3.33 There are 12 foundation schools in Wales. They are largely a legacy of the system of grant maintained schools. Governors of foundation schools have duties and powers in respect of admissions and any prescribed alterations to the schools. Proposals for prescribed alterations, such as the removal of a 6th form, must usually be brought forward by the governing body rather than the local authority, unless arrangements have been made to delegate to the local authority, the Welsh Ministers' powers which derive from the 2000 Act, to propose the removal of a 6th form. A local authority's power is limited to making proposals to increase the capacity of foundation schools. Since the local authority has no control over admissions some foundation schools have increased in size whilst other local schools have seen admissions decrease, adding to surplus capacity in some neighbourhoods and militating against the policy of developing close relations between schools and the communities they serve. Although these situations are not universally replicated, such developments could detract from direct local authority control on planning school places in cases where the resultant surplus capacity at other local schools might ultimately call into question the viability of these schools.

3.34 The current category complicates admissions, planning school places and capital investment planning and can sometimes require a more circuitous and potentially more radical approach to the issue of planning school places than is the case where only community schools are involved. There is no intention to enforce a change of category on those foundation schools that currently exist, but the prevention of the establishment of new foundation schools and further changes of category to foundation school will maintain the status quo in terms of local authority control on admissions.

Who is affected by the proposed Measure

3.35 Bodies or individuals subject to the proposed Measure are:

local authorities;
governing bodies of maintained schools;
governing bodies of certain FEIs;
clerks to school governing bodies; and
maintained schools;.

Implementation and Delivery

Collaboration and Federation.

3.36 The collaboration and the federation clauses are to be commenced by Order. We would anticipate that the Order and regulations would come into

force no earlier than September 2012. The Measure also provides for statutory guidance to be issued on collaboration. Expected timelines for the issue of this guidance would coincide with the making of the order and regulations.

3.37 In relation to federations, new regulations (modelled on the existing Federation of Maintained Schools (Wales) Regulations 2010) will be required, along with statutory guidance. It is therefore envisaged that these provisions would come into force in September 2012.

Governance

3.38 New regulations covering the requirement for mandatory training for governors and clerks; and covering the content of that training will also be required. We would expect to consult key stakeholders such as local authorities and Governors Wales on the content of the subordinate legislation before preparing the regulations.

3.39 We anticipate the consultation and regulation making process would take about a year meaning that regulations would come into force in September 2012 for the start of the new school year.

Territorial Application

3.40 This measure applies in relation to Wales.

Commencement

3.41 Provisions concerning collaboration and school federations would be commenced by way of commencement order. Powers to make subordinate legislation are set out at section 5, together with expected coming into force dates which would be September 2012.

3.42 The provisions in relation to Governors and Clerks would come into force in September 2012.

3.43 It is proposed that the restriction on schools changing category to become foundation schools will come into force at the end of the period of two months beginning on the day on which the Assembly Measure is given Royal Approval.

4. Consultation

4.1 Although no consultation has been undertaken on the proposed Measure, views have been sought from key stakeholders on the broad policy objectives of the proposals. This was achieved through a Ministerial letter to key

stakeholders and official level meetings from September 2010 onwards. The stakeholders contacted were:

The Welsh Local Government Association (WLGA);
Association of Directors of Education in Wales (ADEW);
Governors Wales;
The Welsh Independent Schools Council;
Colleges Wales;
Teaching Unions;
Diocesan Authorities;
Catholic Education Service;
Children's Commissioner;
SNAP Cymru;
Administrative Justice and Tribunal Panel (AJAC);
Estyn; and
Special Educational Needs Tribunal for Wales.

4.2 Responses have been given subject to sight of the full draft Measure. However, it has been possible to identify areas where, generally speaking, proposals were welcomed and also where concerns were raised.

4.3 The principle of collaboration received strong support, but respondents also raised some important points for consideration. One respondent recommended that local authorities should be able to delegate funding to groups of schools to enable collective decision making as to how to deploy resources. There was also some caution that it should not be assumed that all collaboration would result in costs savings; it was noted that there could be costs incurred in collaborating. There would also be a need to protect the quality of services. One view was that legislation was not necessary to ensure collaboration and another that it should not be compulsory.

4.4 The proposals in relation to school governors received strong support. There was some concern that making training compulsory could impact on recruitment and two respondents felt that the training for Chairs did not need to be compulsory; one felt legislation in this area was not necessary. The majority of comments focussed on the support they considered governors needed and the specifics of their role. There were opposing views in relation to the handling of disciplinary cases - one view was that the training should be focused here, another that governors should not have a role in such cases. The need for all governors to have clarity of role, training, support, advice (including professional advice) was expressed. Other suggestions were that clerks should not be local authority employees; there should be a duty on governors to give due regard to professional advice; governing bodies should be smaller; the detail of the training to be provided needed to be considered and that the training would need to be appropriately resourced.

4.5 Views on the proposal to prevent further schools changing category to become foundation schools differed, and some organisations felt they could not express a view as their members would not be of one opinion. On balance the majority of respondents supported the proposal. One suggestion made

was to change the admissions role of current foundation schools to give them greater responsibility for finding places for pupils. Concern was raised that the proposals would lead to increased influence of local councillors; reduced choice; reduced impetus to improve standards; and obstacles to schools undertaking long term financial planning. The question was raised as to why there was no intention to prevent changes of category to voluntary aided schools. One response advocated that the Measure should return all current foundation schools to local authority control.

4.6 In addition to the recent engagement above, the proposals for improved governor training and clerking in relation to the governance of schools, respond to the recommendations made by the E&L Committee in its 2009 report on the Role of School Governors. In drawing up their report, the Committee took evidence from Governors Wales; the Association of Schools and College Leaders; National Association of Head Teachers; The Welsh Local Government Association; Association of Directors of Education in Wales and Estyn.

4.7 Legislation Committee no. 5 has also undertaken consultation on the proposed Measure. Responses are available at the following:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/proposed_education_wales_measure_2011/education_responses.htm

5. Power to make subordinate legislation

5.1 The proposed Measure contains provisions to make subordinate legislation. Table 1 below 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;
- the applied procedure (affirmative, negative, no procedure) if any; and
- an explanation for any Assembly procedures that may apply.

Table 1: Summary of powers to make subordinate legislation

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 6 Proposals for securing collaboration between local authorities, and governing bodies of	Welsh Ministers	Regulations	Suitable for regulations as it will provide detail for scheme which follows on from the intent of the Measure itself.	Negative procedure.	The subject-matter of the subordinate legislation will be technical and will provide detail for the scheme of the

maintained schools and FEIs.					Measure. We consider that it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis.
Sections 10, 11, 12, 13 , 14 and 18 Power for Welsh Ministers to prescribe how local authorities may propose and establish school governing body federations.	Welsh Ministers	Regulations	Suitable for regulations as it will provide detail for scheme which follows on from the intent of the Measure itself.	Negative procedure	The subject-matter of the subordinate legislation will be technical and and will provide the detail for the Scheme following on from the Measure's intent. We consider that it may be appropriate to update the subject matter of the subordinate legislation on a regular basis.
Section 15 Power for Welsh Ministers to issue a Small Schools Order prescribing a number of pupils below which will require school governing federation.	Welsh Ministers	Order	Suitable for regulations as it will provide administrative detail which follows on from the intent of the Measure itself. It may also make different provision for different case or classes of case.	Negative Procedure	Prescribing the number and location will be technical and it may be appropriate to update the number on a regular basis.
Section 21 Power for Welsh Ministers to prescribe mandatory training and the	Welsh Ministers	Regulations	Suitable for regulations as it will provide for administrative detail and for the content of	Negative procedure	The subject-matter of the subordinate legislation will be technical and will provide for

content of the training for clerks to governing bodies.			the training which follows on from the intent of Measure itself. It may also secure the provision of prescribed training to clerks.		detail following on from the Measure's intent. We consider that it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis.
Section 22. Power requiring local authorities to provide a clerk to a governing body if a request is received.	Welsh Ministers	Regulations	Suitable for regulations as it will provide for administrative detail which follows on from the intent of Measure itself.	Negative procedure	The subject-matter of the subordinate legislation will be technical and will provide for detail of the scheme following on from the Measure's intent. We consider that it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis.
Section 23 Placing a duty on local authorities to provide mandatory training for governors. Giving Welsh Ministers powers to set out the content of the governor training and issue statutory guidance.	Welsh Ministers	Regulations	Suitable for regulations as it will provide for administrative detail and content of the training which follows on from the intent of the Measure itself. It may also secure the provision of prescribed training to prescribed	Negative procedure	The subject-matter of the subordinate legislation will be technical and will provide for detail of the scheme following on from the Measure's intent. We consider that it may be appropriate to update the

			governors of maintained schools.		subject-matter of the subordinate legislation on a regular basis.
Section 29 Supplementary powers	Welsh Ministers	Order	Suitable for regulations as provision relates to technical details of amendments to legislation following on from the intent of the Measure.	Negative Procedure	The subject matter of the Order will be technical.
Section 31 Orders and Regulations	Welsh Ministers	Orders and Regulations	General power that details that the regulations may make different provision for different areas or situations as well as supplementary and incidental provision		This is a general power that provides for flexibility in the way that regulations might apply.
Section 32 Commencement of sections	Welsh Ministers	Order	Commencement Order	No procedure	Commencement Order

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 23.18 (vi) for the proposed Measure and follows at Section 7.

6.2 The majority of the provisions in the proposed Measure do not give rise to any significant new or additional administrative, compliance or other costs since they deal with minor modification to existing structures of governance and seek to promote collaborative approaches or administrative changes in the interests of realising efficiencies.

6.3 Where new and additional costs do arise these are set out in section 8 in relation to each part of the proposed Measure, and where the costs would fall.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

7.1 The following options are considered in respect of the proposals set out in the proposed Measure:

Option 1: Do nothing.

Option 2: Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice.

Option 3: Introduce an Assembly Measure.

Option 1 – Do nothing

7.2 In summary, taking the ‘do nothing’ option would mean:

- The recommendations contained in the E&L Committee report into the role of schools governors cannot be fully addressed;
- Mandatory training for governors could not be introduced – governors would be free to choose whether they attended this training;
- Local authorities could not be required to provide prescribed training to particular groups of governors – they would be free to choose what subjects and who attends;
- There would be no control of the content and quality of the training being offered;
- Local authorities could not be required to offer a clerking service to maintained schools or to offer training for clerks;
- There would be no control over the content of the training currently being offered to clerks;
- A missed opportunity to make collaboration central to the thinking, decision making and operation of the education system;
- Federation of schools would continue to be up to governing bodies to determine and local authorities would not have powers to establish a federation.
- Local authorities would sometimes need to employ alternative ways of strategically managing the supply of school places, as in some cases, their ability to act directly could be reduced if more foundation schools are established or result from a change of category.

Collaboration

7.3 Current law set out in the Collaboration Between Maintained Schools (Wales) Regulations 2008, and the Collaboration Arrangements (Maintained Schools and Further Education Bodies) (Wales) Regulations 2008, permits governing bodies of schools and FEIs to work collaboratively by setting up joint committees. However, these regulations are enabling only and governing bodies of both establishments are not obliged to set up joint committees if they do not wish to do so.

7.4 Local authorities reported that, as far as they are aware, schools are not proactively using the existing collaboration regulations to form joint committees with other schools, to explore how they could maximise the opportunities and benefits to learners that working together could achieve.

7.5 School/FEI collaboration and some school/school collaboration is currently taking place in order to maximise the availability of courses in the local curriculum for their area as required by the Learning and Skills (Wales) Measure 2009 and the Transformation Agenda. The Transformation policy similarly aims to provide wider learner choice, reduce unnecessary duplication of provision, and encourage higher quality learning and teaching; but it applies to all post-16 provision. These aims cannot be realised by any single provider. Consequently providers are expected to establish effective collaboration to underpin 14-19 entitlement and maximise the chances of successful learner outcomes.

7.6 The Minister believes more must be done by local authorities, schools and FEIs to ensure that collaboration is more widespread, and is focused not only on delivering curriculum provision but also on achieving a more efficient and effective use of resources..

7.7 Whilst we expect local authorities to encourage collaboration, under current law they have no powers to achieve it, or to enter into collaborative arrangements with governing bodies of schools and FEIs. The Welsh Assembly Government therefore considers that local authorities should be more involved in encouraging school governing bodies to collaborate, and, where appropriate, in entering into collaboration arrangements with these bodies. Therefore local authorities should be given the power to do so, especially when it is likely they will have evidence to suggest that doing so would create opportunities to achieve savings, share best practice, raise standards and improve outcomes. The proposals include a duty on local authorities to consider whether collaboration would lead to improvements in the effective and efficient use of its resources and, if so, to collaborate in the discharge of their functions. The proposals also provide for local authorities to form and become full members of joint committees with schools and FEIs.

7.8 Doing nothing would therefore mean that local authorities would not have the levers they require to secure better collaboration arrangements. It would simply allow the current situation for informal collaboration to continue and would prevent the Welsh Assembly Government from establishing more robust collaboration arrangements.

Federation of Schools

7.9 The Federation of Maintained Schools and Miscellaneous Arrangements (Wales) Regulations 2010 have been in place since April 2010. The regulations enable up to five schools to federate under a single governing body, using the process set out in the regulations. The regulations permit a wide range of federation types with no restrictions on school categories. This includes schools catering for different age groups, clusters of primary schools

and schools across local authority boundaries (with the agreement of the respective local authorities).

7.10 The delay in setting up federations is partly due to the process governing bodies have to follow to establish a federation, which includes consultation with stakeholders which takes time. From informal discussions with local authority colleagues, officials are aware that some schools across Wales are beginning to think about federating and are considering taking advantage of the opportunities offered by federation.

7.11 To assist school governing bodies and encourage them to federate the Welsh Assembly Government is working in partnership with the Welsh Local Government Association, to establish five federation pilots across Wales probably in Gwynedd, Wrexham, Blaenau Gwent, Rhondda Cynon Taf and Carmarthenshire. The outcomes from these pilots will provide useful information and guidance and could create a process template for other schools and local authorities to follow when considering whether to federate.

7.12 In England, governing body federation has shown the potential to achieve resource savings for schools, be that through sharing the curriculum, staff and staff expertise, facilities, ICT; sports equipment and facilities and possibly budgets. Sharing these assets and best practice can have a positive effect that can help every school make education better for all its pupils. Avoiding duplication of effort and resources would leave head teachers and professionals with more time to devote to the core business of teaching and learning and improving standards and outcomes for learners, rather than to administrative or management duties. Other advantages of governing body federation include: providing groups of schools with the ability to co-ordinate curriculum provision or teaching and learning strategies into a localised coherent programme; increasing opportunities to fulfil learners' needs; and extending curriculum entitlement to help facilitate inclusion and diversity across a federation.

7.13 Governing body federation could also strengthen school governance and school governor recruitment and retention. For instance where governing bodies struggle to attract or retain sufficient governors, or where governors lack the skills to be effective federation means that an effective governing body can be established requiring fewer governors. Local authorities will be able to concentrate support and training on fewer governing bodies and governors. Federation could also encourage networking between schools and could be beneficial for clusters of schools with shared interests, for example Welsh medium schools, schools with a religious character, schools located adjacent to one another, or schools with a joint interest in key stage transition arrangements.

7.14 But these opportunities can only be achieved under current law if school governing bodies choose to propose a federation of schools. If schools do not take advantage of the existing provisions they would be unable to tap into the potential benefits that being part of a federation can offer. For this reason the Welsh Assembly Government is committed to securing federation of schools

because of the opportunities it provides to achieve efficiency savings and improve outcomes for learners.

7.15 Doing nothing would allow the current situation to continue and prevent the Welsh Assembly Government from putting arrangements in place to drive forward the Welsh Ministers' vision of schools working together for the benefit of pupils and the school community. If the proposed Measure is not made, local authorities would not be given a power to establish school federations where it would be beneficial to do so and where schools are not taking advantage of the opportunities. It would also hinder the Welsh Assembly Government's policy intention of assisting local authorities to better support schools with small pupil numbers. The school federation proposals in the proposed Measure would permit local authorities to focus on those schools with small pupils numbers and bring them into federation arrangements to benefit from shared and efficiencies in resources, governors and expertise.

Governor Training and Clerking

7.16 In respect of school governance, doing nothing would restrict the ability of the Welsh Assembly Government, local authorities and school governing bodies to respond to the recommendations made in the E&L Committee's 2009 Report. Whilst the report highlighted the excellent work already being carried out by governors it also highlighted some areas for improvements to make governors more effective. These included better support and advice for governors; the case for mandatory training in certain key areas such as induction and chair training; and the role of the clerk and improved training provision for clerks. The Committee Report also concluded that the quality of clerking in schools in Wales is patchy, and there is no consistent approach to supporting clerks or the standards or quality of clerking.

7.17 Under Section 22 of the EA 2002, local authorities are required to provide information and training to governors, free of charge, as they consider necessary, to enable governors to carry out their roles and responsibilities effectively. The legislation does not cover what the content of that training should be, and local authorities are free to choose what training is provided. The legislation also does not require governors to undertake training as part of their role. Attendance at governor training is a purely voluntary matter for governors.

7.18 Doing nothing would allow the current ad hoc arrangements for governor training to go unchecked. There would be no levers to ensure local authorities provided prescribed training to particular groups of governors, nor would there be any standardised approach or control over the content and quality of the training as local authorities would be free to provide whatever they wished. However it is possible that current regulations could be amended to require certain governors, such as new governors and chairs, to attend training.

7.19 There is no provision in current legislation to cover training for clerks to governing bodies. Whilst clerks are not members of governing bodies, they are a component of its effectiveness. Although there is no requirement for

local authorities to provide specific training for clerks, research carried out in 2008 by the all Wales Centre for Governor Research and Training in Swansea (an organisation funded by the Welsh Assembly Government), found that many authorities do provide this. However, there does not seem to be a coherent approach to the content and quality of the training provision.

7.20 Currently a clerk to a governing body is provided through:

- the local authority providing a clerking service for their schools through a service level agreement – local authorities charge for this service but costs are likely to be recoverable from the school's delegated budget;
- governing bodies appointing a member of the school staff to be the clerk, or
- governing bodies appointing anyone they wish – at best this person may be an ex head teacher or ex member of the local authority who would have a working knowledge of education and education law. At worst it could be a person with very little relevant knowledge.

7.21 Findings from research undertaken by the all Wales Centre for Governor Training and Research¹ suggest that the standard and quality of clerking is better where the service is provided by a local authority employee, as they are likely to have a good knowledge and understanding of governing body procedures and law and are able to offer constructive advice. However, current law does not specify who may be a clerk to a governing body and governing bodies are free to appoint whomever they wish to the role.

7.22 Doing nothing would allow current arrangements for clerking to continue, and the level of service provided to governing bodies would be varied and inequitable. Governing bodies clerked by a local authority employee would be able to access quality advice and guidance whilst others would not.

7.23 Doing nothing in respect of both governor training and clerking would therefore prevent the Welsh Assembly Government from making changes and improvements to address the weaknesses in the current clerking arrangements (as identified by the E&L Committee), in order to improve the quality and effectiveness of clerking in schools in Wales; and from making changes to improve effectiveness of governors by improved training provision.

Foundation Schools

7.24 Allowing schools to change category to become foundation schools, or new foundation schools to be established would further complicate the current admissions environment in Wales. Further complexity might also hinder the capacity of local authorities in respect of planning school places and capital investment planning in the sense that more circuitous and potentially more

¹ 2005 Report on Governing Body Clerking Services in Wales produced by the All Wales Centre for Governor Training and Research,

radical approaches might sometimes be needed to effect changes to foundation schools. There could be disadvantage to some parents if further foundation schools were established, as the school admissions process might be harder to understand, and could lead to parents not securing a place at a local community school whilst they pursued a place at a foundation school. Historically local authorities report that the existence of foundation schools presents challenges in tracking pupils, particularly at the point of transfer from primary to secondary, if parents do not return the local authority's school preference form as requested. Whilst it is not necessarily the case that foundation schools tend to increase in size, where this has occurred it has led to diminishing numbers on roll at other schools. The current decline in the number of secondary school pupils could lead to smaller schools becoming unviable, forcing the local authority's hand and obliging it to rationalise in a less strategic manner than would have been desired. It would be preferable to not allow scope for such situations to be widely replicated.

Option 2: Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice.

7.25 In summary, taking the 'do minimum option' means:

- current regulations could be amended to require certain governors to attend induction training, when and if local authorities provided this training;
- guidance could be issued on the content of governor and clerk training and the benefits of collaborating and federating but local authorities and schools would not be required to take account of it;
- current regulations could be amended to require clerks to undertake training;
- existing legislation enables collaboration between local authorities, but the current position would remain in relation to collaboration between local authorities, schools and FEIs. There would be no requirement on a local authority to consider collaboration between the local authority, schools and FEIs and to ensure that this collaboration is secured where there is evidence that collaboration would lead to improvements in outcomes for learners and more effective and efficient use of resources;
- the current situation for collaboration would continue with school and FEI governing bodies choosing to collaborate. There would be no duty on local authorities to consider collaborating and no means for local authorities to enter into joint committees with schools and FEIs;
- The current situation for school federation would continue with school governing bodies being free to consider federating. There would be no levers for local authorities to use to enforce federation.

7.26 Neither of these options would fully address the Welsh Assembly Government's policy intention in the areas described.

Collaboration

7.27 Existing law in section 26 of the EA 2006 provides for regulations to be made enabling two or more school governing bodies to work together collaboratively to discharge any of their functions, by setting up joint committees. Section 166 of the E&I Act 2006 provides for regulations to be made enabling school governing bodies and FEI governing bodies to collaborate by forming joint committees. The two sets of regulations are enabling only which means that governing bodies of schools and FEIs do not have to collaborate if they do not wish to.

7.28 Schools and FEIs are also collaborating through the 14-19 Learning Pathways, the Transformation Agenda and the School Effectiveness Framework, which have been specifically designed to deliver the curriculum and courses which give learners the widest opportunities and choices.

7.29 The policy objective in the proposed Measure is to put collaboration arrangements onto a more formal footing. This would be achieved by placing a duty on schools and FEI governing bodies and on local authorities to consider collaborating from time to time in the exercise of their other functions. If the governing bodies concerned are of the opinion that collaboration could provide efficiencies and savings then governing bodies will be under a duty to collaborate. Local authorities will be brought into these collaboration arrangements by allowing them to be part of the joint committee arrangements.

7.30 There would be no costs to local authorities, schools or FEIs if the current arrangements remain in place.

Federation of Schools

7.31 The current Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 are enabling which means schools do not have to federate if they do not wish to. The regulations have been in place since April 2010 and whilst no schools in Wales have federated under a single governing body we are aware that some schools across Wales are exploring the options and benefits that federation can offer. To assist schools and local authorities with the federation process five federation pilots have been established in Gwynedd, Wrexham, Blaenau Gwent, Rhondda Cynon Taf and Carmarthenshire. At this stage therefore whilst evidence from federation in England can provide us with examples and case studies, it is not known first hand exactly how successful school federation might be in Wales.

7.32 The proposed Measure would give local authorities a power to secure federation of schools that a local authority, governing body of a maintained school or a federation, propose:

- a federation of two or more schools,
- a federation of two or more small schools,
- a federation of one or more small schools and one or more maintained schools (that are not small schools), or

- a federation of one or more small schools and a federation.

The Welsh Ministers have a power to direct for a federation of a school that is causing concern.

7.33 It is not possible to amend the existing federation regulations or the primary legislation to accommodate the proposal to give local authorities a power to federate schools and their governing bodies. If the proposed Measure is not successful then the likely opportunities and benefits of governing body federation would only be experienced by governing bodies who volunteer to federate.

7.34 There would be no additional costs to schools which decided to federate under the existing regulations;; rather the expectation is that there would be resource savings. However there could be administrative costs to local authorities in proposing and following the process for federation.

Governor Training

7.35 The current law covering training for governors is set out in Section 22 of the EA 2002. The requirement is for local authorities to provide information and training for governors, which they consider to be appropriate for governors to carry out their roles and responsibilities effectively. There is no provision for the Welsh Ministers to make regulations detailing the issues that must be covered in training, the frequency of providing the training or the details of the content of the training. Governor training is not mandatory. There is currently no law in place requiring governors of any category to attend any training – it is purely voluntary.

7.36 The current situation means that provision, frequency and content of governor training is not controlled in any way and is very much left to the discretion of individual local authorities. Some local authorities are beginning to work together through consortia arrangements to deliver governor training to a wider audience than their own governors, but there is no strategy in place and no coherent approach to standardising the provision and quality of governor training across Wales. Given the constrictions of current legislation there is also no mechanism in place to allow for changes to be made.

7.37 Stakeholders such as Governors Wales, and some teaching unions, have long recognised that there is a need for some mandatory training on key issues such as induction or training for staff disciplinary matters, and have campaigned for and supported the concept of mandatory training being introduced.

7.38 The most that could be achieved under current legislation is that Regulations could be made to require that all new governors must undertake induction training, and that all governors must attend training on the use of data. The same regulations could also be amended to require chairs of governors to undergo specific training.

7.39 However the Welsh Ministers would continue to have no control over the content and quality of the training being provided. It is also accepted that under current arrangements there is no consistent approach to governor training provision across Wales, and local authorities are free to determine what topics to offer training on and the content of that training. Governors, wherever they are in Wales should be able to access high quality training. It should be possible to have a comprehensive governor training programme in operation in Wales offering minimum standards of quality and content. But under the current arrangements with local authorities having freedom to decide on this matter, this cannot be achieved.

7.40 The Welsh Ministers could issue guidance to local authorities setting out the content of the training being provided, but the guidance would not be statutory and local authorities need not have regard to it although there would be an expectancy that it would be taken into account.

7.41 There would be no resource costs for schools or local authorities if the existing powers referred to in paragraph 7.38 were used. However, there would be an additional call on governors' time if they are required to attend training.

Clerking

7.42 Section 23 of the EA 2002 allows the Welsh Ministers to make regulations requiring that a clerk is appointed to a governing body; who shall make the appointment; any restrictions on who shall be appointed; the process for dismissing the clerk; and requiring that the governing body appoints a governor to act as clerk if the clerk does not turn up. Current restrictions are that a clerk cannot be the head teacher or a non governor member of the governing body; or a governor (unless the clerk does not turn up at a meeting). These details are set out in the Government of Maintained Schools (Wales) Regulations 2005.

7.43 To address concerns raised by the E&L Committee on the quality of clerking in schools across Wales and the general lack of consistency on the support being offered to clerks, policy officials consider that the medium to long term aim is for clerks to be suitably trained. This could be achieved by amending the existing 2005 School Government regulations, which would place a requirement on clerks to attend training and stipulate who may or may not be a clerk. However there is no provision in current law requiring local authorities to offer training specifically for clerks.

7.44 Therefore whilst some changes could be made to existing regulations to stipulate that clerks should be suitably trained, the existing legislation does not go far enough to implement the changes envisaged by the Welsh Ministers that would bring about most impact in raising standards of clerking. The 2005 School Government regulations could not be amended to require local authorities to offer specific training for clerks nor could it require local authorities to offer a clerking service to its schools.

Foundation Schools

7.45 The proposal to prevent further schools from changing category to become foundation schools and to prevent further foundation schools being established can only be achieved through legislation. Alternatively school organisation guidance could be revised and might set out reasonable criteria that proposals for a change of category to foundation (and other changes of category) would be expected to meet in order for there to be an expectation that they would be approved. Such criteria might be that promoters would be expected to demonstrate benefits of the proposal, and the Welsh Ministers might also reasonably have regard to whether the maintaining local authority (and diocesan authority as appropriate) supported the change. The broader principle of avoiding further complication to the current admissions system and of increasing local authority control on admission is well established and any future policies in respect of school organisation and admissions would be likely to be developed with this in mind.

7.46 Such a revision to guidance would not entirely remove the potential for a change of category to foundation and each case would need to be considered on its merits. If a proposal were to show clear benefits and were to be supported by the local authority, there would be a reasonable prospect of its being approved.

Option 3: Introduce an Assembly Measure.

7.47 This option would meet the policy objectives laid out in section 1.

Collaboration

7.48 Taking the option of introducing an Assembly Measure in respect of collaboration will mean:

- the ability to achieve efficiencies by collaborative working to share resources and best practice; share facilities and IT; and share staff and staff skills etc;
- a duty would be placed on local authorities, school and FEI governing bodies to consider collaborating, and if this would further the efficient and effective use of resources, they would be under a duty to collaborate;
- local authorities could be made formal participants or partners in the joint collaboration committee arrangements between schools and FEIs;
- The Welsh Ministers would have the power to issue guidance.

7.49 For school governing body federation

- local authorities would have powers to establish school federation;
- in the case of a school causing concern, it would give a power for the Welsh Ministers to direct a local authority, a governing body of a maintained school or of a federation to propose a federation;
- the Welsh Ministers would also have the power to issue statutory guidance.

In response to concerns raised by members of Legislation Committee 5 during scrutiny of the proposed Measure, amendments have been made to the federation provisions regarding consultation by the local authority on federation proposals. The changes now mean that other than for schools defined as 'small', local authorities are required to consult on their proposals with:

- the governing bodies of the schools or federations to be federated;
- the staff of the schools;
- one or more bodies (if any) appearing to the authority to represent the interests of staff of the schools (which would include unions); and
- registered pupils and their parents.

Where a local authority is considering federating small maintained schools, which have been defined by an Order made under the proposed Measure, the local authority is required to consult only the governing bodies of those small schools, and in accordance with any regulations made. A further amendment has also been made which disappplies the requirement for local authorities to publish federation proposals in respect of small schools. In practical terms local authorities would have to write to the schools they are considering federating with their proposals. The local authorities would not however be under a duty to publish those proposals for persons, other than the governing body, to comment on, although they may do so if they wish. The difference in approach is a distinction which the Welsh Assembly Government wants to make so that there is a more streamlined process to facilitate the federation of small schools. The amendments made at Stage 2 strike a balance between the argument for the Measure to have safeguards for consultation with key stakeholders whilst maintaining a lighter touch approach for small schools.

New section 15A amends section 14(3) of the School Standards and Framework Act 1998 and inserts a new section 18B. These provisions would enable the Welsh Ministers to issue a direction for schools to federate in the following circumstances where:

- a school is causing concern and is in special measures or requires significant improvement (as long as a subsequent inspection does not report that the school is no longer requiring significant improvement or is in special measures);
- the standards of performance of the pupils are unacceptably low and likely to remain so;
- there has been a serious breakdown in the way that a school is managed or governed which is prejudicing or likely to prejudice standards of performance;
- the safety of pupils and staff is threatened;
- the governing body has failed to comply with orders made concerning teachers pay and conditions; or
- it has failed to ensure that the headteacher of the school has complied with such orders.

This amendment also extends the Welsh Ministers' powers of direction so that they will apply to the federation of all maintained schools and not just to the federation of small schools.

Governance

7.50 For school governance the introduction of a Measure would:

- address the concerns and recommendations contained in the E&L Committee's 2009 report into the role of school governors and the opportunity to raise standards in governing body effectiveness;
- provide a means to introduce mandatory governor training – initially this would be induction training for new governors, training for chairs of governors and training for all governors on the use of data.;
- governors would be required to attend the training;
- the Welsh Ministers would have the power to set out the content of that training;
- local authorities would be required to offer a clerking service to all their maintained schools.

Foundation Schools

7.52 Finally, in order to prevent further foundation schools being established or other schools becoming foundation schools, a change is required to the legislation around the establishment of schools and the categorisation of schools in order to ensure that none are created in future. Whilst school organisation policy could be adopted to provide set out criteria which the Welsh Ministers are to have regard to determining an application from an existing school to change any other category of school, or any other change of category, this proposed Measure provides the most secure option to effect that change.

Minor and Consequential Amendments to the Proposed Measure

A number of minor amendments have been made which are set out in section 19 of the proposed Measure. They make amendments to the Education Act 2002 as follows.

- Section 19 of the 2002 Act is about the requirement for all maintained schools to have a properly constituted governing body and sets out amongst other things what regulations may cover. A new subsection (9) to section 19 is to be inserted clarifying that the provisions in Section 19 also apply to the governing bodies of federations within the meaning of section 20 of this proposed Measure.
- A new subsection 4A will be inserted to section 20 of the Education Act 2002 clarifying that references to instruments of government in section 20 of the Act includes instruments of government made for schools that have federated under provisions in the proposed Measure.

- Paragraph 5 of Schedule 1 to the Education Act 2002 is amended to make it clear that where one or more schools in a federation closes the governing body of the federation does not automatically dissolve.
- The amendments to section 24, section 39 are consequential amendments so that after the Measure is passed these sections apply to schools in England only;

8. Costs & benefits

Option 1: Do nothing.

Collaboration

8.1 Taking the 'do nothing' option will ensure no additional costs are incurred, by local authorities, schools and FEIs when considering whether they should collaborate as the existing regulations are enabling. Informal collaboration between senior executives of schools and FEIs would also continue without any additional cost being incurred. There will be no additional costs for local authorities and school governing bodies if the current enabling collaboration proposals continue.

8.2 However, doing nothing may prevent opportunities being realised for schools and FEIs to identify possible savings from collaboration with other governing bodies and explore the full range of benefits that can be achieved by working collaboratively.

Federation

8.3 The existing federation regulations are enabling which means that schools may choose whether or not to federate under a single governing body. Doing nothing means that this situation would continue at no additional costs to schools. However, if schools choose not to federate there might be opportunity costs because resource efficiencies offered by a single governing body would not be realised because a single governing body of a federation is more likely to have wider strategic oversight.

Governance

8.4 Doing nothing would prevent the step change required in school governance standards from being made. One of the purposes of the proposed Measure is to improve the capability and effectiveness of governors and to raise the quality of clerking. Together these steps should raise standards of school governance with a positive impact on school performance. Doing nothing will not incur any costs for local authorities or schools.

Foundation Schools

8.5 In respect of foundation schools, not preventing the establishment of such schools or further schools from changing to this category will leave the way open to increase current complications in admissions systems. Any impediment to a local authority's capacity to manage school places could result in a less efficient and more costly school organisation structure.

8.6 The "do nothing" option could lead to costs if schools bring forward proposals to change category. There are costs to schools in carrying out consultation and publishing notices in connection with a change of category and it can reasonably be anticipated that these would be met from school budgets. It is difficult to realistically estimate such costs, although they would potentially not be great, with a maximum likely cost of £1,000.

8.7 Proposals for changes of category to foundation school have been infrequent (2 in the last decade) but there is potential for this to increase, and there are early indications that 2 additional schools may take this route.

8.8 The cost of determining an individual proposal in terms of Welsh Assembly Government staff time, applying projected band costs at 2010/2011 has been estimated at c£10,000.

Option 2: Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice.

8.9 The following table summarises the expected costs and savings associated with Option 2 and the text below provides more information where necessary.

Section	Costs	Savings
Collaboration - schools, and FEIs	Possible costs related to clerking joint committees ranging from £450 to £2,000 a year	Efficiencies from the flexible use of staff and resources
Federation	Administrative costs for local authorities in implementing and processing federations established by governing bodies	Administrative savings from having fewer governors. Efficiencies from the flexible use of staff and resources
Clerking	Status quo would remain. Schools that employed their own clerks would continue to pay for them. Schools that used a local authority clerk, where this service is offered, would continue to pay via a service level agreement with the clerk.	
Governor Training	No additional costs - already supported through the Revenue Support Grant	
Foundation Schools	Cost of producing guidance minimum of	

	<p>£1000 Retention of current costs in administrating proposals for category change estimated £10,000.</p>	
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Collaboration and Clerking of Joint Committees

8.10 There could be some costs to local authorities, schools or FEIs if the current enabling collaboration arrangements remained in place. Schools and FEIs would continue to be free to choose whether to set up joint committees. If they did, these committees would have to be clerked. The costs of clerking these joint collaboration committees can be estimated using the current cost charged by local authorities for providing school governing bodies with a clerking service. These costs vary in each of the local authorities that currently provide a clerking service. The costs range from £450 to £2,000 per school per year, for which a clerk is provided for the three termly governing body meetings, papers and agendas are prepared, minutes drawn up and ad hoc advice is provided and correspondence handled. We anticipate that if a local authority officer also clerked a joint committee then that would entail a modest increase to the current service level agreement costs. Alternatively schools and FEIs could appoint their own clerks through a private arrangement (see paragraph 8.24 (a) and (b) for explanation of 'private arrangements').

Federation.

8.11 There would be no additional costs to schools which decide to federate as part of the current federation regulations, rather the expectation is that there would be resource savings. However there could be some administrative and staff costs to local authorities in supporting and assisting schools with the federation process. How much exactly would depend on the salaries of the local authority staff and the proportion of their time taken to carry out the administrative work to support the schools

Governance

8.12 There would be no resource costs for schools or local authorities if current regulations were amended to require new governors and chairs to attend specific training, and all governors to attend use of data training as local authorities receive funding to provide governor training via the Revenue Support Grant. However, there would be an additional call on governors' time if they are required to attend training.

Foundation Schools

8.13 Guidance could set out the matters the Welsh Ministers will consider in determining proposals for changes of category of schools, including changes to foundation schools. It is always possible that the Welsh Ministers' determination of a particular case could be challenged by way of judicial

review, although where Ministers had determined proposals in accordance with guidance, the risk of such challenge should be reduced. We would of course have to ensure that the guidance itself was lawful. The production of revised guidance and its dissemination would be at cost to the Welsh Assembly Government. Proposals for existing schools to change category to foundation or for new schools to be established would continue to require costly Ministerial determination.

8.14 The do minimum option would require a minor amendment to the current guidance that has been issued to local authorities and others in respect of statutory proposals. The administrative costs of this option would be a minimum of £1000, in terms of staff time calculated on the same basis as the do nothing option.

Option 3: Introduce an Assembly Measure

8.15 The sections of the Measure in relation to school governance are expected to be the principal area which could result in additional expenditure for local authorities and schools. These costs would be expected to be met from within existing local authority and school budgets but there is also some potential for savings to be realised from the modification of administrative functions.

8.16 The following table provides a breakdown of where expected costs and savings are expected and the text below provides more detailed information.

Section	Costs	Savings
Collaboration	Salary and administrative costs for local authorities to facilitate collaboration ranging from £450 to £2,000 per school per year (See paragraph 8.10).	
Federation	Salary and administrative costs to local authorities to establish federated governing bodies depending on salary scale of staff member and proportion of time	Administrative savings for local authorities from having fewer governors to support. Efficiencies from the flexible use of staff and resources

	spend carrying out the administrative support	
Clerking	Any costs to local authorities in providing governing bodies with trained clerks, would be recouped from the budgets of those schools choosing to take up the offer.	Potential for more focused and improvement management of Governing bodies, with potential rewards for schools and pupils and in terms of making the best use of governors time
Governor Training	No additional costs - for local authorities already supported through the Revenue Support Grant	Potential for more focused and improvement management of Governing bodies, with potential rewards for schools and pupils and in terms of making the best use of governors time
Prevention of further Foundation schools being established or resulting from proposals for change of category	Possible cost to Welsh Assembly Government of producing guidance £1000	Savings in Welsh Assembly Government administration costs involved in determining proposals estimated £10,000. Maintain current efficiency at local authority level

Collaboration

8.17 The proposed Measure will place a duty on schools and FEIs to consider collaborating, and if by doing so it would promote the effective and efficient use of public resources, those institutions would be under a duty to collaborate. The proposed Measure would also allow local authorities to become full members of any joint collaboration committees, involving either schools/schools or schools/FEIs, enjoying the same rights, including voting rights, as schools and FEIs.

8.18 This builds on and extends the current enabling legislation in the Collaboration Between Maintained Schools (Wales) Regulations 2008 and the Collaboration Arrangements (Maintained Schools and Further Education Bodies (Wales) Regulations 2008 which allow school governing bodies to form joint committees with other school governing bodies and the governing bodies of schools and FEIs to form joint committees.

8.19 Collaboration between schools and between secondary schools and FEIs using the existing regulations is flexible and can occur as often as is needed to meet the objective/task set. There is no requirement in law for a

joint committee to meet in the same way as there is for a school governing body to meet at least once a term.

8.20 Similarly, informal collaboration (or co-operation) being achieved by staff in schools and FEIs is impossible to quantify as this would be done on an 'as and when needed' basis to secure an outcome.

8.21 As neither the current regulations nor the proposed Measure will dictate the nature of collaboration, it is not possible to place a cost on entering into collaborative arrangements and in any case the expectation would be that collaboration would only be entered into where it achieved the more effective and efficient use of public resources. The potential for such savings is explored in the PWC report on the 'Review of the cost of administering the education system in Wales – Phase 1'.

8.22 There would likely be costs to school and FEI governing bodies to operate joint committee arrangements, as the schools/FEIs would have to fund the cost of running the joint committee including finding a clerk. Costs for finding a clerk could be as estimated at paragraph 8.10.

8.23 As the members of the joint committee are governors, and therefore volunteers, no payment would be made to them to take part in the joint collaboration committees, other than travel and subsistence. Whilst there may be staff costs associated with local authority attendance of meetings of joint committees particularly if these occur outside normal working hours, it is expected that this would be offset by the reduction in the number of meetings local authority staff would need to attend as a result of the collaborative arrangements.

Clerking of joint committees

8.24 Under current law and the proposed Measure proposals, joint committees must be clerked and require that the clerk is not a member of the joint committee, unless the clerk fails to turn up. Because of the variances in clerking arrangements across Wales it is not possible to estimate how much it would cost governing bodies to clerk a joint committee, but the expectation is that this cost would be very small. There are a number of options available:

- a) The existing clerk to the school governing body or FEI governing body could be asked to carry out this additional role. This option may have some additional costs depending on the terms of the clerk's contract. If the clerk is paid a fee based on clerking 'x' governing body and/or committee meetings there would likely be an additional charge to clerk joint committees. How much additional costs would be paid would depend on the particular rates of remuneration given to the clerk. Paragraph 8.10 gives an illustration of what these might be.

Some schools may have an employee to be a clerk. The terms of employment for that person may be working in the school for a number of hours and clerking whatever governing body and committee

meetings are required. In this case clerking the joint committees would not likely incur any additional costs.

b) The joint committee could appoint another person to be the clerk. If the existing governing body clerk does not have the capacity to clerk the joint collaboration committee, the schools/FEIs would be free to appoint a separate clerk. The Welsh Assembly Government does not have any information on the payments schools make to clerks under a private arrangement (i.e. clerks not provided through a local authority arrangement). The costs of this would vary considerably from school to school but paragraph 8.10 gives an illustration of what these might be.

c) Those schools in local authorities that offer a clerking service and have taken up the offer could ask the local authority clerk to carry out this role. The Service Level Agreement between schools and local authorities offering a clerking service are very specific and will set out exactly what meetings would be clerked for a fee. Most of these would be the full governing body meetings rather than committee meetings. If local authority clerks are asked to clerk joint collaboration committee meetings this would inevitably mean an additional cost to schools and/or FEIs. Paragraph 8.10 provides information about cost estimates.

8.25 There would be a time cost to the governor members and the clerk of the joint collaboration committee, as preparation for and attendance at joint collaboration committee meetings would be in addition to their routine governing body/committee meetings.

Federation of School Governing Bodies

8.26 The proposed Measure contains proposals to give local authorities a power to form a federation of school governing bodies if they have evidence supporting that federation would be beneficial and improve outcomes for learners in the schools involved. The Measure has been amended to require local authorities to consult the governing bodies of the schools or federations to be federated; the staff of the schools; any bodies appearing to represent the interests of staff of the schools (eg unions); pupils and parents. For small schools the local authority would be required by the Measure to consult the governing bodies of those schools only. Information on possible costs of federation are included in paragraph 8.29.

8.27 The current Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 enable governing bodies of up to five schools to decide whether or not they wish to federate under a single governing body. The regulations also set out the process to be followed to achieve federation including consultation with stakeholders.

8.28 The regulations have been in place since April 2010 and whilst no federations have been established in Wales schools are beginning to consider federation and explore the benefits it can offer. The Welsh Assembly

Government has also established pilot schemes the outcomes of which will provide best practice guidance and case study exemplars for schools and local authorities to assist them with their federation proposals. Consequently, the Welsh Assembly Government does not have any information yet on the administrative costs to schools or local authorities to establish a federation.

8.29 Given the process that schools and local authorities (through the proposed Measure) would have to follow to federate governing bodies, which includes preparation of a report; photocopying the report and its distribution to stakeholders for consultation; attending governing body meetings to discuss proposals; and assessing responses to the consultation and preparing an report on the outcome of the consultation, there may be some salary and administrative costs for local authorities . What these are would depend on the salary of the person involved and the proportion of their time spent on supporting the schools. It is possible that the local authority Governor Support Officers would carry out most of the support tasks. If it is estimated that the amount of work to support federating schools took enough time that required a full time Governor Support Officer for a year, the costs could possibly range from £33,000 to around £35,000. We do not have access to the salary structures in place in local authorities, and salaries obviously vary between local authorities. Our best estimate is that the full time salary costs of a Governor Support Officer could fall within this range. In reality the costs are very likely to be substantially less as supporting schools to federate is not expected to require the services of a full time staff member. .

8.30 It is difficult to estimate what cost savings there would be as federations have not been established in Wales yet. Evidence from schools that have federated in England show there are clear advantages and savings that can be achieved by federated schools being able to share resources to raise standards and improve teaching and learning; improved leadership and expertise; and the single governing body utilising and having access to the budget shares of all the schools in the federation. Annex 9 of a Department for Children, Schools and Families Report (now the Department for Education) issued in September 2009² evidences some of the financial savings from the case studies of small rural primary schools federating. Based on shared headships the estimated savings on headteachers' salaries ranged from a net minimum of £12,000 - £54,530 depending on variables such as the pay point and salary scale of the heads; on costs; numbers of schools in the federation.

8.31 For local authorities, one outcome of governing body federation is that there would likely be some cost savings as there would be fewer governors to support and train, and reduced costs for clerking, but at this stage no information is available on this.

² Better Together Exploratory Case Studies of formal collaboration Between Small rural primary Schools – September 2009 - Research Report DCSF RR162

Training of Governors

8.32 The proposed Measure would require local authorities to provide mandatory training for governors in topics prescribed in regulations. Current thinking is that these would be induction training; training for chairs and training for all governors on the use of data. There would also be a requirement on new governors, chairs of governors and all categories of governors to attend the training. Governors are volunteers and do not get paid. The 'costs to governors' would therefore be their time to attend the training.

8.33 Local authorities are required under the EA 2002 to provide training and support for governors free of charge. They receive funding to provide this training via the Revenue Support Grant, and local authorities are free to determine how much of their budget will be spent on governor training. Currently, there is also no control over the topics covered by local authorities in their governor training programmes. The topics are decided at their discretion but should focus on equipping governors with the skills and knowledge they need to discharge their functions effectively.

8.34 The Welsh Assembly Government funds the All Wales Centre for Governor Training and Research, based in Swansea to carry out research and produce training materials for local authorities, which are free of charge. In 2010 – 2011 the Centre received a grant of £52,500 of which around £16,000 was allocated to produce a national induction training programme. In 2008 the Centre researched local authority training provision for governors in Wales. The report found that 21 local authorities provided induction training for new governors and 7 provided specific training for chairs.

8.35 To further assist local authorities and help reduce the costs of providing training, in 2007 the Swansea Centre produced a training programme for chairs of governors; and is currently working on a training package for induction training which should be available from April 2011. Both these training packages have been specifically developed and written in a way that allows a person to be able to deliver the training package. For example the package contains slides, questions for the trainer to ask and points that should be covered in the training session.

8.36 In order to improve the quality of the induction and chair training being provided, the proposed Measure will allow regulations to provide a statutory framework setting out the content of that training.

Clerks to Governing Bodies

8.37 The proposal in the Measure is that local authorities would be required to offer a clerking service to all its schools and if accepted to provide that service. Local authorities would also be required to offer clerk training.

Schools are not obliged to take up the offer of a clerk or the local authority clerk training.

8.38 The Welsh Assembly Government recently commissioned Millar Research to undertake research on clerking provision across Wales. Initial findings show that currently:

- 9 local authorities offer all schools a clerking service;
- 3 offer a service to some schools, i.e. all primaries but not secondary schools; and
- 10 local authorities do not offer a clerking service at all.

8.39 However, the costs of providing a clerking service could be wholly recouped through the service level agreement with schools.

8.40 The findings also demonstrate that the cost of a clerk service provided by a local authority varies considerably within a range of a minimum of £450 per school for clerking up to 6 full governing body meetings; whilst the maximum charge is £2,000 per school to clerk three governing body meetings per year (one per term), plus all the administrative work of setting agendas, issuing papers, taking the minutes and giving advice to the governing body.

8.41 Each local authority has a set menu for the cost of clerking additional meetings, whether of the full governing body or committees. Again rates between local authorities vary significantly. Some local authorities charge by the hour for additional meetings (one example is £17 per hour); others charge a blanket fee, one local authority charging for example £150 per 2 hour meeting plus an additional charge of £5.50 for every 15 minutes over that. Therefore given the variances that exist in local authority clerk provision costs it would be very difficult and misleading to give an average cost of clerking a governing body or committee meeting.

8.42 There need not be any additional cost for local authorities in offering a clerking service as the schools who take up the offer could be charged for the clerk's time through their delegated budgets.

8.43 We have obtained statistics on the numbers of maintained schools in every local authority. We have selected the local authority with the most schools – 131 – and currently not offering a clerking service; and similarly a local authority with the lowest number of schools – 56 – to give an approximate figure for costs.

8.44 Based simply on the rawest data we have, the costs of providing a clerking service in the local authority with 131 schools, if all schools accepted the local authority's offer, would range from around £60,000 (based on a cost of £450 per school) for providing a clerk to 6 full governing body meetings per year, to £262,000 for a service (based on £2,000 per school) for a more wide-ranging service.

8.45 The cost in the local authority with 56 schools would range from £25,200 based on a cost of £450 per school to a maximum of £112,000 based on costs of £2,000 per school.

8.46 However, schools are not obliged to take up the local authority offer, and it is unlikely that they will if the cost of the local authority service exceeds the cost the school is currently paying its clerk. The Welsh Assembly Government holds no information on what schools pay their ‘private clerks’.

Foundation Schools

8.47 The legislation in respect of foundation schools is not expected to incur costs however, the change is expecting to realise savings in the reduction of administrative processes for the Welsh Assembly Government.

8.48 Making the Measure would save the potential costs set out in the “do nothing” option but an amendment to the guidance as set out in the “do minimum option” would be desirable in order to provide clarity that any changes of category would need to meet more set criteria, although each case would still have to be considered on its merits. The staff time that would be saved as a result of change of category proposals not being made would enable staff to progress other case work more quickly, although since historically such proposals have been infrequent potential savings might be considered insignificant. There is a danger that making the Measure could propel further schools into seeking a change of category prior to the Measure coming into effect which would lead to administrative costs per case similar to those described in the “do nothing option”

8.49 The key benefits from introducing an Assembly Measure are as follows:

Provision	Benefits
Collaboration	<p>Make collaboration a more common place feature and enable the delivery of education in the most effective and efficient manner in a given area</p> <p>Disseminate good practice and expertise, to develop strategic leadership for groups of schools and to focus resources.</p> <p>Local authorities able to bring strategic perspective to bear to ensure collaborative arrangements are clearly focused on objectives and with a view to encouraging bodies to look beyond institutional boundaries to meet the needs of learners.</p>
Federation	<p>Advantages to learners by having a single governing body with an overview and ability to share resources by improving opportunities for learning i.e. wider access to curriculum, higher</p>

	quality learning, sharing staff, facilities and best practice.
Governance	Improve the capability of governors and to raise the standard of clerking. In turn these should raise standards of school governance with a positive impact on school performance.
Foundation Schools	Maintain the current capacity of the local authorities to manage school places.

9. Competition Assessment

9.1 A Competition Assessment is not needed for this Measure as it is concerned with administrative arrangements for the management of schools.

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

10. Post implementation review

Collaboration, Federation, Governor Training and Clerking

10.1 Once the proposed Measure and subordinate legislation is in place progress on implementing the new legislation and its impact can be monitored through regular stakeholder/official meetings. Officials will meet with representatives of the Association of Directors of Education in Wales (ADEW) Governor Support Officers three times a year and on a quarterly basis with Governors Wales.

Foundation Schools

10.2 Enquiries about changes of category will be monitored and taken account of in the development of any further legislation on school organisation. The Welsh Assembly Government continuously monitors the efficiency and effectiveness of local authority school provision through the collection of data and Estyn inspection evidence.

Annex A – Explanatory Notes

Introduction

These Explanatory Notes are for the Education (Wales) Measure 2011 which was passed by the National Assembly for Wales on XXX and approved by .

They have been prepared by the Department for Children, Education, Lifelong Learning and Skills in the Welsh Assembly Government in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the proposed Measure and have not been endorsed by the National Assembly for Wales.

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

COMMENTARY ON SECTIONS

Part 1: Collaboration by education bodies

Section 1 – Education bodies

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

Section 2 - The collaboration objective

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

Section 3 - Duty of education body to collaborate

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

Subsection (3) limits the duty to consider collaboration imposed on further education institutions to the provision of education for those up to 19.

Section 4 - Meaning of 'powers of collaboration'

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

Section 5 - Powers to collaborate

This section confers on education bodies broad powers to enable them to collaborate for the purpose of discharging or facilitating the discharge of their duties under section 3 of the Measure, section 33K of the Learning and Skills Act 2000, section 116J of the Education Act 2002, or the duty of another education body under those provisions. Section 33K of the Learning and Skills Act 2000 and section 116J of the Education Act 2002 impose duties to collaborate in connection with the delivery of the local curriculum.

Section 5 allows an education body to collaborate with another education body to facilitate the discharge of that other education body's duties, whether or not that would facilitate the discharge of its own duties.

The powers to collaborate include powers to delegate functions and to arrange for joint committees to carry out their functions.

Whilst the Measure confers the same powers on all types of education body covered by the Measure, it does not empower or compel other bodies to collaborate with an education body. However, such bodies may be able to do so under their existing powers.

Subsection (3) provides that these new powers do not affect any education body's powers in any other legislation and that they are limited by any provision which may be made in regulations under section 6.

Sections 6 - Regulations about the power to collaborate

Subsection (1) provides a power for the Welsh Ministers to make further provision by way of regulations about the power to collaborate. Regulations under this subsection could, for example, set out the functions that an education body cannot delegate to another body or to a joint committee.

Subsection (2) provides that regulations may make particular provision about the constitution and procedure of joint committees of the collaborating education bodies, and other connected matters.

Subsections (3) and (4) provides that regulations may modify any legislation relating to the functions of the collaborating education bodies, where those functions are delegated, or relating to the bodies by whom those functions are to be discharged, in its application to those functions or bodies. Legislation may need to be modified in order to reflect the fact that another body or a joint committee may in fact be carrying out a particular function (in the place of, or as well as the education body on whom the function is conferred).

Section 7 – Guidance

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

Section 8 – Interpretation of this Part

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

Section 9 - Minor and consequential amendments

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

Part 2: School Governance

Chapter 1: Federation of maintained schools

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

Section 10 - Federation of schools by governing bodies

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

Section 11 – Proposals by local authorities to federate schools

Subsection (1) provides local authorities in Wales with the power to propose that two or more maintained schools may federate, that an existing federation federates with one or more schools, or that two or more existing federations may federate, under a single governing body.

Subsection (2) provides that if a local authority makes proposals to federate schools or federations under this section, it must publish those proposals. Subsection (2A) provides that a local authority is to consult with certain bodies about the published proposals.

These requirements to publish and consult do not apply to a proposal to federate small schools. A small school is defined by an order made under section 15 of the Measure. Where there is such a proposal, sub-section (2C) requires a local authority to consult only with the governing bodies of the small schools to be federated.

Subsection (3) provides that a local authority must determine any proposals to federate schools. Regulations will set out the procedure for determining proposals. The local authority may confirm the proposals (with or without modification or subject to the occurrence of an event) or withdraw them.

Subsection (4) allows local authorities to consider federating with schools maintained by another local authority providing they obtain the consent of the other local authority.

Subsection (5) requires the consent of certain persons before a local authority may propose a federation that include a foundation or voluntary school. Those persons are, in the case of a Roman Catholic or Church in Wales school, the diocesan authority, and for other foundation or voluntary schools, the persons who appoint the foundation governors.

Subsection (6) provides that regulations may specify requirements in relation to proposals to federate. These could include, for example, requiring the consent of certain persons to be obtained before an authority can make, publish or confirm proposals. Regulations made under this sub-section may make different provision for a federation involving a small school.

Section 12 – Implementation of proposals under section 11

This section makes provision about the implementation of proposals to federate.

Subsections (2) and (3) set out who is required to implement the proposals. These are the local authority or the governing body in so far as the proposals provide for this, and any other person set out in regulations.

Where a local authority has confirmed proposals they must be implemented as confirmed (subsection (4)). However confirmed proposals may be modified at the request of a persons specified in regulations (subsection (5)).

Under subsection (6) a local authority can determine not to implement a confirmed proposal if it would be unreasonably difficult to do so or if circumstances have changed so much that it is no longer appropriate to do so. Regulations may require the local authority to consult prescribed persons before making that determination (subsection (7)).

Section 13 – Single governing body for federations

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

Section 14 – Regulations in relation to federations

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

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

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

Section 15A - Federation of schools causing concern by direction of the Welsh Ministers

This section allows the Welsh Ministers to direct the federation of schools causing concern. It does this by inserting a new section 18B into Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (intervention in schools in Wales causing concern).

The new section 18B(1) and (2) explains what is meant by a school causing concern for the purposes of this power of intervention. It includes - a school in special measures; a school requiring significant improvement; a school at which pupils’ standards of performance of the pupils are unacceptably low; a school where there has been a serious breakdown of management or governance which is prejudicing or likely to prejudice standards of performance; a school where the safety of pupils or staff is threatened; and a school which is failing to comply with a teachers’ pay and conditions order.

Subsection (3) of the new section 18B allows the Welsh Ministers to direct a local authority or a governing body, and subsection (4) sets out the different types of arrangements they may direct. These include federating a school causing concern with another one or more schools or with an existing federation, and directing a school causing concern to leave a federation.

Subsection (5) of the new section 18B requires the Welsh Ministers to consult certain bodies before making a direction and subsections (6) and (7) make provision in connection with making, varying and revoking directions, including that directions are enforceable by a mandatory order of the High Court.

Section 15A of the proposed Measure also amends section 14(3) of the School Standards and Framework Act 1998 so that a local authority may not exercise its powers of intervention in relation to a school causing concern if the Welsh Ministers are exercising their power of intervention in the new section 18B.

Section 17 – Guidance given by Welsh Ministers

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

Section 18 – Federations: supplementary provisions

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

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

This section makes consequential amendments to sections 19 and 20 of the Education Act 2002, so that those provisions refer to federations under the Measure. It limits the application of sections 24, 25 and 39 of the Education Act 2002 to England because they have been replaced, for Wales, by provision made by this Chapter. It also amends paragraph 5 of Schedule 1 to the Education Act 2002 to make it clear that if a school in a federation closes and there is more than one school remaining in the federation, the governing body of the federation does not automatically dissolve.

Section 19A – Minor and consequential amendments to the Education Act 2005

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

Section 20 – Interpretation of this Chapter

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

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

Section 21 – Information and training for governors of maintained schools

Subsections (1) and (2) place a duty on local authorities to provide information to governors of maintained schools in Wales to enable the governors to carry out their functions.

Subsections (3) and (4) provide that regulations may require a local authority to secure (free of charge) the provision of prescribed training to school governors.

Subsection (6) provides that a local authority must provide training to governors to enable them to carry out their functions.

Section 22 – Duty of local authorities to provide clerks to the governing bodies of maintained schools

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

Section 23 – Training for clerks to the governing bodies of maintained schools

Regulations under this section can impose a duty on the body that appoints a clerk to a governing body (in accordance with regulations under section 23 of the Education Act 2002). The duty that can be imposed is to ensure that the

person appointed as a clerk has completed training to a standard set out in the regulations. Subsection (3) provides that regulations may make further provision in relation to the training of clerks.

Section 24 – Duty of local authorities to secure availability of training for Clerks.

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

Part 3: Foundation Schools

Foundation schools

Section 25 - Prohibition of establishment of new foundation schools

Chapter 2 of Part 2 of the School Standards and Framework Act 1998 (“the 1998 Act”) makes provision about the establishment, alteration and discontinuance of maintained schools in Wales. Section 28 of, and Schedule 6 to, the 1998 Act make provision about proposals for the establishment and alteration of community, foundation, voluntary schools and maintained nursery schools, and the implementation of those proposals. This section amends section 28 of, and Schedule 6 to, the 1998 Act by removing the ability of local authorities or other promoters to propose the establishment of a new foundation school in Wales. This section also amends section 113A of the Learning and Skills Act 2000 to remove the ability of the Welsh Ministers to propose the establishment of a foundation school for pupils over the age of 16.

Section 26 - Prohibition of change of category to foundation school

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

Section 27 - Savings: proposals to establish new foundation schools

Section 27 contains saving provisions. The amendments made by section 25 do not affect any proposal for the establishment of a new foundation school published prior to section 25 coming into force, and which has not been implemented. The proposal will therefore continue to be dealt with under section 28 of, and Schedule 6 to, the 1998 Act as though the amendments made by section 25 had not come into force.

Section 28 – Savings: proposals to change category to foundation schools

Section 28 contains saving provisions. The amendments made by section 26 do not affect any proposal for a school to change from one category to another published prior to section 26 coming into force, and which has not been implemented. Such a proposal will be dealt with under Schedule 8 to the 1998 Act as though the amendments made by section 25 had not come into force.

Section 29 - Supplementary powers

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

Part 4: General

Section 30 - General interpretation

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

Section 31 - Orders and regulations

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

Section 32 – Commencement

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

Section 33 - Short title and inclusion of Measure within the Education Acts

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