

National Assembly for Wales

Education Bill: Provisions relating to Wales

February 2011

The Education Bill was presented to the UK Parliament by the Rt. Hon Michael Gove MP, the Secretary of State for Education, on 26 January 2011.

Although most of the Bill relates to England only, it contains numerous provisions which relate to Wales. These include framework powers which would extend the legislative powers of the National Assembly in relation to the professional standards of teachers and the funding of pre-16 education and training. The Bill also provides Welsh Ministers with powers in relation to aspects of education in Wales, including powers over student finance.

This paper provides a guide to all of the Welsh provisions contained in the Bill.

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Education Bill:
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February 2011

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Summary

This paper provides a background briefing on the [Education Bill](#), which was presented to the UK Parliament by the Rt. Hon Michael Gove MP, the Secretary of State for Education, on 26 January 2011. **The Bill will be debated by the House of Commons during its Second Reading debate on 8 February 2011.**

The main elements of the Bill are to:

- **Increase the authority of teachers to discipline pupils** and ensure good behaviour, with a general power to search pupils for items banned under the school's rules, the ability to issue same-day detentions and pre-charge anonymity when faced with an allegation by a pupil of a criminal offence;
- **Remove duties on schools and local authorities to give them greater freedom** to decide how to fulfil their functions;
- **Extend the Academies programme** by introducing Academies for 16 to 19 year olds and alternative provision Academies;
- Change school accountability, with **more focused Ofsted inspections and wider powers to intervene in under-performing schools**;
- **Abolish five arm's length bodies¹**, with many of their functions ending and those which are to continue being discharged by the Secretary of State, who will be directly accountable to Parliament for them;
- Make provision to give effect to proposals to **increase college freedoms** and make changes to the skills entitlements;
- Enable the UK Government to introduce an **entitlement to free early years provision for disadvantaged two year olds**; and
- Take forward two elements of the Government's response to the [Browne Review: Securing a sustainable future for higher education in England](#), **enabling a real rate of interest to be charged on higher education student loans and allowing fees for part-time undergraduate courses to be capped.**

The Bill also enhances the functions of Welsh Ministers and contains framework powers for the National Assembly which aims to extend its legislative competence in relation to:

- **Professional standards of teachers and others**; and
- **Funding of pre-16 education and training.**

This paper provides a guide to all of the Welsh provisions contained in the Bill.

¹ These are the General Teaching Council for England (GTCE), the Training and Development Agency for Schools (TDA), the School Support Staff Negotiating Body (SSSNB), the Qualifications and Curriculum Development Agency (QCDA) and the Young People's Learning Agency for England (YPLA).

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Education Bill

1. Introduction

The [Education Bill](#) (“the Bill”) was introduced by the Secretary of State for Education, the Rt. Hon Michael Gove MP, on 26 January 2011. It was initially announced as the *Education and Children’s Bill* in the Queen’s Speech on 25 May 2010 and takes forward the legislative proposals included in the Schools White Paper, [The Importance of Teaching](#), and measures from the Department for Business, Innovation and Skills to improve skills, including elements of the reforms to higher education funding.

The press release accompanying the introduction of the Bill hailed it as “an important step in implementing the Government’s education reform programme and helping to create an education system that delivers ever higher standards for all children”.²

The main elements of the Bill are to:

- **Increase the authority of teachers to discipline pupils** and ensure good behaviour, with a general power to search pupils for items banned under the school’s rules, the ability to issue same-day detentions and pre-charge anonymity when faced with an allegation by a pupil of a criminal offence;
- **Remove duties on schools and local authorities to give them greater freedom** to decide how to fulfil their functions;
- **Extend the Academies programme** by introducing Academies for 16 to 19 year olds and alternative provision Academies;
- Change school accountability, with **more focused Ofsted inspections and wider powers to intervene in under-performing schools**;
- **Abolish five arm’s length bodies**³, with many of their functions ending and those which are to continue being discharged by the Secretary of State, who will be directly accountable to Parliament for them;
- Make provision to give effect to proposals to **increase college freedoms** and make changes to the skills entitlements;
- Enable the UK Government to introduce an **entitlement to free early years provision for disadvantaged two year olds**; and
- Take forward two elements of the Government’s response to the [Browne Review: Securing a sustainable future for higher education in England](#), **enabling a real rate of interest to be charged on higher education**

² [The Department for Education Press Release, The Education Bill, 27 January 2011 \[Accessed 28 January 2011\]](#)

³ These are the General Teaching Council for England (GTCE), the Training and Development Agency for Schools (TDA), the School Support Staff Negotiating Body (SSSNB), the Qualifications and Curriculum Development Agency (QCDA) and the Young People’s Learning Agency for England (YPLA).

student loans and allowing fees for part-time undergraduate courses to be capped.

In relation to Wales, the Bill seeks to insert four new Matters into Field 5 (Education) of Schedule 5 to the *Government of Wales Act 2006*⁴ (“the 2006 Act”) which will provide the National Assembly with additional legislative powers in the following areas:

- **Matter 5.15A:** Professional standards – including training, professional development, performance management and qualifications;
- **Matter 5.15B:** Professional conduct, recruitment, disciplinary proceedings, registration and the required levels of health and fitness for teachers and the wider education workforce;
- **Matter 5.15C:** Accreditation of providers of training for teachers and the wider education workforce; and
- **Matter 5.6A:** Funding of pre-16 education or training in Wales.

The Bill also amends Matters 5.15(c) and 5.16(c) to extend the legislative powers of the National Assembly to cover the training of all the persons listed in Matter 5.15A, and not just the training of teachers and specialist training assistants for schools.

The Bill also contains provisions that will confer powers on Welsh Ministers in relation to student finance and boarding provisions in schools and colleges. Additional functions are also given to Welsh Ministers as a result of the abolition of the General Teaching Council for England (GTCE) and the Training and Development Agency for Schools (TDA).

As this Bill makes provisions which are within the areas where the National Assembly has legislative competence and where Welsh Ministers have executive functions, the Welsh Government has confirmed that it intends to seek a legislative consent motion⁵ in relation to the Clauses in the Bill which relate to Wales.⁶

This paper will outline the legislative powers which are transferred to the National Assembly and the executive functions granted to Welsh Ministers in the Bill.

⁴ [Government of Wales Act 2006 \(c.32\)](#)

⁵ Further information relating to legislative consent motions is available in the [MRS Quick Guide: Legislative Consent Motions](#).

⁶ [Department for Education, Education Bill: Explanatory Notes, 26 January 2011, paragraph 56 \[Accessed 28 January 2011\]](#)

2. The Bill

Most of the provisions of the Bill relate to England only, however some clauses relate to Wales, to England and Wales and to the UK as a whole. This section summarises these clauses.

Parts 1 and 2 of the Bill, which relate to Early Years Provision and Discipline, do not apply to Wales.

Part 3: School Workforce

This part of the Bill abolishes three arm's length bodies – the [GTCE](#), the [TDA](#) and the [School Support Staff Negotiating Body](#) (SSSNB). It also provides for the relevant **functions of the GTCE and the TDA to be undertaken by the Secretary of State and where appropriate by Welsh Ministers.**

Clause 11 gives effect to Schedule 2 of the Bill that makes consequential amendments to other Acts of Parliament, which apply to England and Wales, following the abolition of the GTCE. According to the Explanatory Notes this **“widens the powers that Welsh Ministers have to share information with the General Teaching Council for Wales (GTCW)”**.⁷

Clause 13 deals with the protection of teacher anonymity by inserting three new sections into the *Education Act 2002*⁸ to **restrict the reporting of allegations of offences by teachers in England and Wales.** These new sections restrict the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence where the alleged victim of the offence is a registered pupil at the school.

Clause 14 to 17 deals with the abolition of the TDA, and **ensures that in relation to Wales, the Welsh Ministers have the same powers and are subject to the same constraints as they previously exercised through the TDA.**

Part 4 of the Bill, relating to Qualifications and the Curriculum and which abolishes the [Qualifications and Curriculum Development Agency](#) (QCDA), does not apply to Wales.

Part 5: Educational Institutions: Other provisions

This part repeals certain duties on the governing bodies of maintained schools in England and repeals the duty on local authorities to appoint a school improvement partner in each maintained school. It also provides for changes to the inspections framework for schools.

Clause 42 makes the same change to the definition of boarding provision in Wales as in England, but makes further provision in relation to Wales. In particular

⁷ Department for Education, *Education Bill: Explanatory Notes*, 26 January 2011, paragraph 53 [Accessed 28 January 2011]

⁸ [Education Act 2002 \(c.32\)](#)

it enables Welsh Ministers to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in Wales.

Clause 44 in effect restores Section 409 of the *Education Act 1996*⁹ in Wales and repeals it in England. This Section provides for local authorities to consider complaints about the curriculum and was repealed in error for both England and Wales by the *Apprenticeships, Skills, Children and Learning Act 2009*¹⁰.

Clause 47 makes changes to the *Education Act 1996*, which deal with charges which maintained schools are permitted to make for "optional extras" provided by a school. This Act applies in both England and Wales.

Part 6 of the Bill, relating to Academies, does not apply to Wales.

Part 7: Post-16 Education and Training

This part abolishes a further arm's length body, the [Young People's Learning Agency for England](#) (YPLA); it provides for the relevant functions of the YPLA to be transferred to the Secretary of State, and gives the necessary powers to make schemes for the transfer of staff from this body to the Secretary of State.

Clause 62 repeals the provisions in the *Apprenticeships, Skills, Children and Learning Act 2009* that established the YPLA. This Clause applies to the whole of the UK.

Part 8: Student Finance

This part includes measures that form part of a package of higher education reforms for England announced by the Rt. Hon David Willetts MP, the Minister for Universities and Science, in an oral statement in the House of Commons on [3 November 2010](#) and later refined in a written statement by the Rt. Hon Vince Cable MP, the Secretary of State for Business, Innovation and Skills, on [8 December 2010](#). It will apply the tuition fees cap for full-time courses on a pro rata basis to part-time courses, and increases the cap on the interest rates that can be charged on new student loans in England.

Clause 70 gives the Welsh Ministers the same **powers in relation to interest rates on student loans** as it gives to the Secretary of State in relation to England.

Clause 71 gives the Welsh Ministers the same **powers in relation to course fees for part-time students at higher education institutions** as it gives to the Secretary of State in relation to England.

⁹ [Education Act 1996 \(c.56\)](#)

¹⁰ [Apprenticeships, Skills, Children and Learning Act 2009 \(c.22\)](#)

Part 9: Powers of the National Assembly for Wales

Clauses 72 and 73 gives the National Assembly framework powers in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce; and in relation to the funding of pre-16 education and training. These are discussed more fully below.

Further amendments to Matters 5.15 and 5.16 in relation to training are made by **Clauses 72(2) and 72(4).**

All Clauses in **Part 10** of the Bill applies to the whole of the UK and cover general and largely technical issues such as financial provision and details of order and regulation making powers.

3. Provisions for Wales: Framework powers

The Bill amends Schedule 5 of the *Government of Wales Act 2006* Act in Field 5 (Education) to insert four new matters:

Matter 5.15A

The professional standards (including training, professional development, performance management and qualifications) required of—

- (a) teachers and other persons who work in schools;
- (b) teachers and other persons who work in relevant independent educational institutions;
- (c) teachers and other persons who work in institutions concerned with the provision of further education;
- (d) persons involved in the provision of pre-16 education or training or post-16 education or training, other than in schools, relevant independent educational institutions or institutions concerned with the provision of further education;
- (e) persons involved in the provision of services of the kinds mentioned in matter 5.8.

Matter 5.15B

The following, in relation to the persons listed in matter 5.15A—

- (a) professional conduct;
- (b) recruitment;
- (c) disciplinary proceedings;
- (d) registration;
- (e) required levels of health and fitness.

Matter 5.15C

The accreditation and funding of providers of training for persons listed in matter 5.15A.

Matter 5.6A

Funding of pre-16 education or training.

Clause 72(2) also amends Matter 5.15 by inserting a new subsection (c) which extends the legislative powers of the National Assembly to cover the training of all the persons listed in Matter 5.15A in relation to inspections. A similar amendment is made to Matter 5.16 by Clause 72(4), which extends the legislative powers of the National Assembly to cover the training of all the persons listed in Matter 5.15A in relation to the provision of advice and information.

In a written statement issued on 27 January 2011, Leighton Andrews AM, the Minister for Children, Education and Lifelong Learning, stated that the Welsh Government had sought “powers in relation to the regulation and training of

teachers and the wider education workforce in Wales and Pre 16 School Funding” through the Bill.¹¹

The Minister added that:

Such provision would enable the Welsh Assembly Government to bring forward legislative proposals to address the issues identified in the review of professional standards, performance management and professional development and allow the greatest flexibility in implementing these proposals.

In accordance with the rest of Field 5 of Schedule 5, the Measure power for funding of pre-16 education or training would enable the Assembly to pass an Assembly Measure which could create other models of government funding for education in the future. It covers the funding of any or all of the pre-16 education functions of local authorities, the Welsh Ministers, or governing bodies.¹²

The Welsh Government also published a Memorandum on 27 January 2011 setting out in detail the rationale behind the legislative powers sought through the Bill. The Memorandum also provides examples of areas which the Welsh Government could address in receiving these additional legislative powers. These are outlined below.

3.1. Matters 5.15A and 5.15B

Matters 5.15A would enable the National Assembly to legislate in relation to the professional standards required of teachers and the wider education workforce. Matter 5.15B provides the National Assembly with the legislative powers in relation to professional conduct, recruitment, disciplinary proceedings, registration and the required levels of health and fitness for teachers and the wider education workforce.

According to the Memorandum, these powers could “enable the Welsh Assembly Government to address the issues identified in the review of professional standards, performance management and professional development and allow the greatest flexibility in implementing the proposals”.¹³ In addition, they would also “enable provision to be made which would help the Welsh Assembly Government to fulfil its *One Wales* commitment to develop a national structure for classroom assistants”.¹⁴

These powers would also enable the Welsh Ministers to “develop one simple, consistent and overarching system for the education workforce in Wales”¹⁵ which would include “a continuum of professional standards and a framework for

¹¹ Welsh Government Written Statement, *Education Bill Measure Powers Written Statement*, January 27 2011

¹² *Ibid*

¹³ *Ibid*, paragraph 25

¹⁴ *Ibid*, paragraph 26

¹⁵ Welsh Government, *Welsh Assembly Government Memorandum on Framework Provisions for the National Assembly for Wales*, January 2011, paragraph 16

professional development, underpinned by robust performance management arrangements”.¹⁶

Specifically, the Memorandum states that powers transferred to the National Assembly by Matters 5.15A and 5.15B would:

... enable the Assembly to legislate to make changes to the General Teaching Council for Wales (GTCW), which could involve extending its remit, altering its constitution, abolishing it and replacing it with another body or bodies or conferring further functions on the GTCW, which need not necessarily be limited to teachers. Such legislation could establish a new body or bodies with registration and other functions or a different system of registration.¹⁷

Following the announcement by the Secretary of State for Education in June 2010 that the GTCE would be abolished in England, the Minister has provided information on the Welsh Government’s position in relation to the GTCW in Wales. In response to a written question from Jenny Randerson AM on 27 September 2010, the Minister stated that:

In June 2010, Michael Gove, the Education Secretary, announced his intention to abolish the General Teaching Council for England (GTCE). What is suggested in England is not necessarily right for Wales and I have been considering my position. It is my intention to seek the devolution of powers to decide the future of the General Teaching Council for Wales (GTCW).¹⁸

In an additional response to an oral question from Peter Black AM on 1 December 2010, the Minister confirmed that the Welsh Government was seeking powers that would allow the National Assembly to address the future of the GTCW:

I am seeking framework powers that would allow us to determine the future of GTCW; the options for the future range from its abolition to the possible expansion of its role in further areas, such as the wider education workforce. A variety of views about the GTCW are held by the different teaching unions.¹⁹

The Welsh Government’s Memorandum states however that there are no plans to abolish the GTCW “until the Assembly Government has consulted fully on the future role, remit and need for the Council”.²⁰

¹⁶ Ibid

¹⁷ Welsh Government, *Welsh Assembly Government Memorandum on Framework Provisions for the National Assembly for Wales*, January 2011

¹⁸ [WAQ56347, Jenny Randerson to Leighton Andrews \(Minister for Children, Education and Lifelong Learning\), RoP, p2, 18 August 2010 \[Accessed 1 February 2011\]](#)

¹⁹ [RoP, 1 December 2010 \[Accessed 1 February 2011\]](#)

²⁰ Welsh Government, *Welsh Assembly Government Memorandum on Framework Provisions for the National Assembly for Wales*, January 2011, paragraph 10

3.2. *Matter 5.15C*

Matter 5.1C seeks to provide legislative powers for the National Assembly in relation to the accreditation of providers of training for teachers and the wider education workforce, in addition to the funding of training. According to the Memorandum:

As well as covering the present system where the Higher Education Funding Council for Wales (HEFCW) accredit providers, based on criteria issued by the Welsh Ministers, this would also enable the Assembly to legislate to allow the Welsh Ministers to be able to accredit or allow other persons to accredit; or to widen the scope for provision in the future, for example, by considering school centred initial teacher training.²¹

The Memorandum also confirms that the powers contained in Matter 5.15C would also “enable the Assembly to legislate to strengthen or expand the Welsh Ministers’ powers in relation to HEFCW’s funding of initial teacher training, or to make provision about a different system of funding or training”.²²

3.3. *Amendments to Matters 5.15 (c) and 5.16 (c)*

Clauses 72(2) and 72(4) of the Bill seek to amend Matters 5.15(c) and 5.16(c) to enable the National Assembly to legislate so that the Welsh Ministers could make provision about the inspection of, and the provision of advice, information and the carrying out of studies in relation to, training covering the school and wider education workforce.

According to the Memorandum, the powers contained in Matter 5.15B, along with the amendments proposed to Matter 5.16(c) would provide the National Assembly with legislative powers “in relation to the promotion of careers in the school and wider education workforce”.²³ This would allow the National Assembly to legislate:

... to allow the Welsh Ministers to undertake the promotion of careers in the school and wider education workforce, for another person or body to carry out the promotion of careers in the school workforce, or for a new body to be established to do so. It would also allow the Welsh Ministers to make grants available to any person promoting careers in the school and wider education workforce.²⁴

According to the Memorandum, these powers “are in part designed to enable the Assembly to legislate in response to the abolition of the TDA”.²⁵

²¹ Ibid, paragraph 27

²² Ibid, paragraph 281

²³ Ibid, paragraph 30

²⁴ Ibid, paragraph 31

²⁵ Ibid, paragraph 32

3.4. *Matter 5.6A*

Matter 5.6A seeks to provide legislative powers to the National Assembly in relation to the funding of pre-16 education or training in Wales. According to the Memorandum, this power along with the legislative powers already available to the National Assembly under Schedule 5 to the 2006 Act will:

... enable the Assembly to make an Assembly Measure which would create other models of government funding for education in the future. It covers the funding of any or all of the pre-16 education functions of local authorities, the Welsh Ministers, or governing bodies.²⁶

The Memorandum adds that:

The Assembly Government would be able to propose legislation to include the funding (perhaps by way of a grant making power) of independent schools in Wales if, for example, it is considered that they can best meet the need for some aspect of pre-16 education.²⁷

²⁶ Ibid, paragraph 42

²⁷ Ibid

4. Powers for Welsh Ministers

The Bill contains numerous provisions which apply to England and Wales that alter the functions of Welsh Ministers. These are outlined below.

4.1. Abolition of arm's length bodies

The Bill makes consequential provisions relating to the functions of Welsh Ministers as a result of the proposed abolition of the GTCE and the TDA in England. In particular, the Bill provides that the relevant functions of these bodies are to be undertaken by the Secretary of State and where appropriate by Welsh Ministers.

4.2. Boarding provisions in schools and colleges

Clause 42 of the Bill provides Welsh Ministers with powers to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in Wales.

4.3. Student finance

The Bill provides Welsh Ministers with the same executive powers given to the Secretary of State in England in relation to the setting of interest rates in student loans. In practice, this gives Welsh Ministers the power to set interest rates in student loans for students who start their course on or after 1 September 2012 through regulations, provided that the rates do not exceed those commercially viable.

The Bill also provides Welsh Ministers with the same executive powers given to the Secretary of State in England in relation to course fees for part-time students at higher education institutions. This power would enable Welsh Ministers to apply a regime of capping the amounts which institutions providing higher education courses can charge part-time students, as can currently be done in relation to full-time students.

5. The National Assembly for Wales Referendum 2011

The passage of the Bill coincides with the referendum on whether the National Assembly should gain further legislative powers, which will take place on 3 March 2011.²⁸

The Welsh Government's Memorandum explains that the matters listed in the framework powers in the Bill are not set out in the same detail in Schedule 7 but that they already fall within the broader subjects in paragraph 5 of Part 1 of that Schedule, which includes "education, vocational, social and physical training".²⁹

The Memorandum adds that:

This means that in the event of an affirmative vote in the referendum (due to be held on 3rd March 2011), the Assembly would be able to legislate in relation to these matters. But in the event of a "no" vote the current process will continue, whereby the Welsh Assembly Government will be able to seek legislative competence for the Assembly on a case by case basis through framework powers in Acts of Parliament and Legislative Competence Orders (LCOs) under section 95 of the 2006 Act. Under this scenario, the framework powers in this Bill would confer legislative competence on the Assembly in the specific areas of, regulation of teachers and the wider education workforce in Wales and the funding of the pre-16 education system in Wales.³⁰

²⁸ Further information about the referendum can be found in the [MRS Research Paper: National Assembly for Wales Referendum 2011](#).

²⁹ Welsh Government, *Welsh Assembly Government Memorandum on Framework Provisions for the National Assembly for Wales*, January 2011, paragraph 4

³⁰ *Ibid*, paragraph 5