

Purpose of the consultation

1. This consultation invites comments on the proposition that responsibility for making proposals regarding the future organisation of post-16 provision in maintained schools (including voluntary and foundation schools) and Further Education institutions should be delegated to local authorities following the prospective transfer of functions from the National Council for Education and Training for Wales (ELWa) to the National Assembly for Wales on 1 April 2006.

ELWa's existing powers in relation to the organisation of school sixth form provision

2. ELWa's powers in respect of school sixth form organisation proposals encompass powers in respect of inadequate sixth forms under the Learning and Skills Act 2000 (LSA) and powers in respect of area reorganisations (embracing LEA maintained schools, voluntary schools and foundation schools) under the same Act (as amended by the Education Act 2002).
3. The way in which ELWa is able to exercise these powers is governed by the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004. These Regulations enable ELWa to make proposals to open, close, or alter a school sixth form, including that of a voluntary school or foundation

school. Regardless of whether there are objections, proposals are determined by the Minister for Education and Lifelong Learning under powers delegated to her by the National Assembly.

4. The rationale that led to the creation of these powers was the need for an overarching body to take the lead in making proposals for the reorganisation of school sixth forms that went beyond the competence of individual LEAs to make proposals themselves through their own powers under the School Standards and Framework Act 1998 e.g. where such reorganisations might extend beyond the boundaries of the LEA and/or involve a voluntary or foundation school.
5. The Regulations were intended to ensure that ELWa took the lead, in collaboration with local partners, in local planning across a range of different 16-19 providers to give all young people access to a full range of high quality and diverse post-16 learning. Reorganisation proposals would be prompted, for example, by an Estyn area inspection or a 'Pathfinder' review of local provision and would entail a solution that also involved other post-16 learning providers (subject to their agreement) such as FE institutions or, conceivably, private training providers.
6. The impending merger of ELWa with the National Assembly and the associated transfer of functions means that ELWa's powers under the School Organisation Proposals by the National Council for Education

and Training for Wales Regulations 2004 will be exercisable by the Assembly Government from 1 April 2006¹.

ELWA's existing powers in relation to Further Education institutions

7. ELWa currently exercises the function of proposing the creation and/or dissolution of Further Education institutions (including sixth form colleges and tertiary colleges) under the Further and Higher Education Act 1992.

8. The way in which ELWa is able to exercise these functions is governed by the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (Wales) Regulations 2001. These regulations specify the content, timing and manner of publication of draft proposals made by ELWa for the establishment and dissolution of Further Education corporations. Such proposals are determined by the Minister for Education and Lifelong Learning under powers delegated to her from the National Assembly.

9. The merger of ELWa and the associated transfer of functions means that ELWa's functions under the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (Wales) Regulations 2001 will be exercisable by the Assembly Government from 1 April 2006.

¹ The National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005

Proposal

10. This consultation exercise explores the possibility of making an arrangement whereby local authorities might exercise these powers of proposal on behalf of the Assembly Government in a manner which preserves and, where appropriate, enhances the role of LEAs in the strategic planning of post-16 education both in and between their respective areas.

11. This proposition for delegating the power from the ELL Minister to local authorities to make comprehensive proposals for the reorganisation of sixth form provision, including its integration with further education provision, seeks to satisfy both the rationale behind the provision of the Learning and Skills Act 2000 (as amended) and the leadership role which the Assembly Government expects Local Authorities to play in their areas, working together with other local stakeholders.

12. The proposed delegation arrangement post 1 April 2006 would accord with the procedures for developing, consulting upon and publishing proposals for reorganisation that have already been established except that, where previously ELWa would have taken the lead in bringing forward such proposals for change, this part of the process would in future be handled by Local Authorities.

Delegation

13. Section 41 of the Government of Wales Act provides that the Assembly may make arrangements with a relevant authority (in this instance, Local Authorities) under which the relevant authority could exercise the Assembly's functions on its behalf.
14. What is proposed is a delegation of functions to local authorities using a section 41 agreement. This would not be a formal or outright transfer of functions as such, but an arrangement which would not affect the ultimate responsibility of the Assembly for action taken on its behalf. Indeed it would not prevent the Assembly discharging those functions directly in the event of any failure on the part of a local authority to exercise the delegation when appropriate or in an appropriate manner. It could be made in a way that embraced more than one local authority (to cover cross boundary reviews), for example, acting through a form of joint committee (the structure and functions of which would of course be a matter for the local authorities involved).
15. The effect of the delegation of functions would be to extend LEAs' powers in respect of community schools by allowing them to make proposals to open, close or alter the sixth forms of foundation and voluntary schools and/or to propose the creation of FE institutions (such as sixth form or tertiary colleges) where, in the authority's/authorities' view this offered the best way of meeting local needs.

16. It is proposed that delegation of powers to the local authorities would be made on the basis of a standard section 41 agreement so as to permit any authority or authorities acting together via a joint committee to exercise the powers in specified circumstances i.e. in the event of inadequate provision or scope for improvement being identified by Estyn, as a consequence of a “Pathfinder” review of local provision initiated by local stakeholders, or as the product of planning new 14-19 pathways options. It would also provide for withdrawal of the delegation in the event of any specific cases of failure to exercise the delegation appropriately by individual authorities.

17. The arrangements for proposals affecting school sixth forms would largely replicate the current arrangements whereby the local authority makes school reorganisation proposals under powers in the School Standards and Frameworks Act 1998 and the Assembly Minister then determines them in the event of objections, except that the LEAs’ delegated powers of proposal would extend to foundation and voluntary schools and the Minister would determine all such proposals, whether or not there were objections.

18. Similarly, reorganisation proposals involving FE institutions would emulate the current arrangements whereby ELWa makes such proposals and the Minister makes the final determination, only it would be the LEA(s) formally making the proposal in the future.

19. There is no intention to reduce or diminish current responsibilities or to alter existing arrangements regarding the management and funding of provisions and institutions. It is intended that delegation would only affect the process by which proposals for reorganisations were prepared, consulted upon and published. Management of the further education sector and of foundation and voluntary schools would remain independent of the local authority. The existing power of an LEA to reorganise school provision under the Schools Standards and Framework Act 1998 would not be affected by this proposal.

20. The key aim would be to put in place an appropriate mechanism for improved planning of provision at sub-regional and local levels across a range of providers in the interest of learners. Such proposals would need to be the product of collaborative analysis and planning by local stakeholders and thus represent a collective view on the appropriate arrangements for the future. Only proposals with this degree of collaborative working would be likely to obtain Ministerial approval.

Question 1: Views are sought on whether the role of preparing sixth form reorganisation proposals, under the powers provided in the Learning and Skills Act 2000 (as amended by the Education Act 2002) and in collaboration with local stakeholders, should be delegated to Local Authorities?

Question 2: Views are sought on whether Local Authorities should be able to put forward such proposals which also involve the creation of Further Education institutions or whether this role should remain with the Assembly Government?

Role of Community Consortia for Education and Training

21. The potential delegation of these functions to LEAs may affect the remit and number of Community Consortia for Education and Training (CCETs) whose prime role is to achieve improvements in the delivery of education and training and promote collaboration between schools, FE and training providers and others to meet the needs of individuals and employers more effectively and coherently.
22. As prospective sounding boards for the development of sixth form reorganisation proposals, CCETs could continue to play an important role in respect of some aspects of 14-19 provision (as well as post 19 provision), particularly in conveying the views of 'demand-side' interests such as learner representatives and employers.
23. However, this might best be achieved by reconfiguring CCETs to operate at a sub-regional or regional level, so as to avoid duplication of interest with the relevant Local Authorities and the 14-19 Networks. 14-19 Networks play an important role in the strategic planning and development of provision within the Local Authority area to maintain a

joint option menu of provision for learners. Local Authorities leading the planning of sixth form and 14-19 FE provision within an area through the development of local options menus would be required to take account of sub-regional or regional perspectives on skills and employment needs by seeking views from the reconfigured Consortium covering the area in question.

24. The Consortia might also be formally reconstituted as working groups of the Spatial Plan areas in order to provide direct links to the wider spatial development of the areas. The name CCET would need to be changed as they would move from having a community focus to operating with a wider spatial perspective; and they might instead be called Learning and Skills Reference Groups to reflect their consultative character. Their membership might be drawn predominantly from the 'demand side' of the planning provision i.e. organisations representing employers, trades unions, and individual learners (including learning promotion, careers, employment and special needs support organisations in the public and voluntary sectors). They would provide direct links both to employers in the area and to the regional offices of the Assembly Government's Department for Education, Lifelong Learning and Skills which would support their activities. In this way, they would retain their input to the production of Regional Statements of Needs and Priorities which will continue to influence the deployment of resources made available for learning programmes each year.

Question 3: Comments are invited as to whether there is a continuing role for CCETs if the powers to propose reorganisation of post-16 provision are delegated to Local Authorities?

Question 4: If so, should they be reconstituted so that their coverage is aligned with the Spatial Plan areas, and act as working groups of the Spatial Plan area programmes?

Question 5: Should they be reconstituted as Learning and Skills Reference Groups with membership drawn predominantly from organisations representing consumers of learning? If so, is this a suitable name for such groups; and what organisational representation should they include?

Question 6: What could be expected of the reconstituted CCETs specifically in respect of proposals by Local Authorities for the reorganisation of sixth form and 14-19 FE provision in sub-regional areas?

How the process would work post delegation

25. It is envisaged that a Local Authority would have the leadership role of seeking to build a local consensus around a future integrated strategy for the local area. The arrangements would replicate the current pre-16

arrangements whereby the local authority proposes and the Assembly Minister has the role of determination in the event of objections.

26. A brief summary of the process envisaged would be as follows:

- Local Authority brokers a concordat between prime stakeholders regarding draft proposals to be consulted upon.
- Local Authority undertakes a consultation with interested parties, setting out the reasons for the proposals and the supporting evidence.
- Local Authority publishes the proposals for reorganisation and there is a period for objections.
- Local Authority collates any objections, their comments on the objections and submits these with the proposals to the National Assembly for determination.
- The Assembly Minister determines the proposals whether or not there have been objections. The Minister's decision is final and can only be challenged through the Courts by means of an application for judicial review.

27. During its existence, ELWa has not brought forward any sixth form reorganisation proposals for consideration by the Assembly Government. The current arrangements have, therefore, never been tested. However, ELWa is currently engaged in Pathfinder reviews in a number of areas and is conducting a preliminary consultation in respect of four of these. In due course after the merger of ELWa with the Welsh Assembly Government, and

the proposed delegation of powers to local authorities, these reviews might lead to the publication of future proposals.

28. The Assembly Government has it in mind to pilot the proposed delegation arrangements, e.g. by making a delegation to one local authority (or more than one if the Pathfinder area is wide than a single authority) to take forward the results of a Pathfinder review. This would enable to the Assembly Government to undertake an evidence-based assessment of effectiveness of the process before making a general delegation on a basis applicable to all authorities.

Question 7: Views are invited on whether the Assembly should pilot the proposed delegation arrangement in order to make an evidence-based assessment of its practicalities, and if so, whether one or more of the current Pathfinder projects would be suitable for such a pilot?

Resources

29. Proposals for reorganisation are likely to be prompted by Estyn reviews or Pathfinder-type studies, or the development of local option menus for 14-19 provision. It is not anticipated that there would be a need for Local Authorities to have staff resources available for this work on an ongoing basis. Not all authorities would have to engage in sub-regional reviews and those that do occur would be spread over time. Some form of supplementation of resources might be needed as and when a Pathfinder review or an action plan in response to an area review by Estyn needed to be carried out. One way of

doing this would be to second the Welsh Assembly Government's Department for Education, Lifelong Learning and Skills (DELLS) regional office staff to the Local Authority/Authorities concerned to assist in the preparation of proposals. The Section 41 delegation could provide for this.

Question 8: Views are invited on the desirability and practicality of DELLS regional office staff being seconded to Local Authorities to assist in the preparation of proposals?