

## **Education and Lifelong Learning Committee**

Date: 19 January 2005

Venue: Committee Room, Cardiff Bay

Title: 4<sup>th</sup> Session Education Bill

### **PURPOSE**

To note and respond to the provisions of the Education Bill, which received its second reading in the House of Lords on 13 December 2004.

The full text of the Bill and the explanatory notes are available in hard copy through the Members' Research Service, and through HMSO at:

Education Bill –

<http://www.publications.parliament.uk/pa/ld200405/ldbills/010/2005010.htm>

Explanatory Notes –

<http://www.publications.parliament.uk/pa/ld200405/ldbills/010/en/05010x--.htm>

Amendments –

<http://www.publications.parliament.uk/pa/ld200405/ldbills/010/amend/ldam010.htm>

### **SUMMARY**

This paper and the attached annexes set out for the Education And Lifelong Learning Committee the main provisions of the Education Bill. Included are a clause by clause breakdown (Annex A), a summary of the Wales-specific clauses (Annex B) an overview of the school inspection framework (Annex C), a summary of the Bill's non-inspection provisions (Annex D).

This paper provides an opportunity for Members to respond to the provisions of the Bill, and for the

Parliamentary Under-Secretary of State for the Wales Office to brief the Committee on the policy intent underlying these provisions.

Members may wish to consider this paper in conjunction with the overview of the Education Bill circulated to Members under cover of the Committee Clerk's e-mail of 10 December 2004.

## BACKGROUND

The vision for education in Wales was set out in "The Learning Country", the Assembly's paving document for primary and secondary education legislation, and strategic statement on comprehensive education and lifelong learning in Wales to 2010.

The Assembly has worked with the Department for Education and Skills (DfES) in the development of the Education Bill to ensure that the Bill allows the Assembly the legislative framework and flexibility to pursue its ambitions for education in Wales.

The Education Bill is divided into 5 parts, has 124 clauses and 19 Schedules. The majority of the provisions relating to Wales are enabling in character, providing the Assembly with discretionary powers as to the extent of their application in Wales.

## PROVISIONS OF THE EDUCATION BILL

In the main, provisions relate to both England and Wales (59 clauses) with a further 40 Wales only clauses and 25 England only clauses.

Of the 40 Wales only clauses:

26 re-enact provisions in the School Inspections Act 1996 relating to inspections. Some of the re-enacted provisions contain modifications. A new Common Inspection Framework has only recently been introduced in Wales (from 1 September 2004) following extensive consultation. The Framework is set within current primary legislation and underpinned by secondary legislation introduced by the National Assembly. It would be premature therefore to implement wholesale the additional inspection changes taken by England on the face of the Bill. The Bill instead provides for the Assembly to retain current legislative provision and also offers flexibility for the Assembly to adjust elements of the inspection framework in Wales. This will enable the Assembly to mirror the approach being taken forward in England, either in part or in full, to a time table that can take account of the development of the new Common Inspection Framework and experiences in England. (Clauses 18 to 20, 22 to 42, 49 and 51 refer.)

8 re-enact provisions in the Education Act 1994 relating to the Higher Education Funding Council for Wales (HEFCW). HEFCW will continue to have responsibility for funding Initial Teacher Training (ITT) in Wales, whereas provisions for England provide for ITT funding to be via the Training and

Development Agency for Schools (the expanded and re-named Teacher Training Agency). Some of the re-enacted provisions contain modifications. (Clauses 79 and 82 to 88 refer.)

One (clause 115) is a technical measure to ensure that new functions conferred on the Secretary of State by amendments to existing legislation containing functions of the Secretary of State that have been transferred to the National Assembly for Wales, continue to be read in their entirety as functions transferred to the Assembly.

The remaining clauses and some of the re-enacted provisions add new Wales only measures which:-

- provide that the terms and conditions for HMI (as all other Estyn staff) are subjected to National Assembly approval (clause 18 (7));
- require that the Assembly provide advice on the appointment, re-appointment and removal of the Chief Inspector (HMCI) (clause 18(6));
- enable the Assembly to establish an advisory panel and to advise the Assembly on any matter relating to the functions of HMCI (clause 21);
- bring the inspection of services provided by Careers Wales within HMCI's remit and the Common Inspection Framework (clause 54 - 56);
- enable the Assembly to adjust elements of the inspection system in Wales so as to enable it to mirror the approach being taken forward in England, either in part or full (clause 61);
- provide a power for the Assembly to remove the requirement for a governor's annual report and annual parents' meeting (clause 100(3)); and
- retain the existing framework for school funding but provide power to change it in accordance with the system envisaged for England (Schedule 16, paragraph 5).

The table at Annex B provides a more detailed breakdown, whilst the table at Annex A provides a clause by clause breakdown highlighting the clauses specific to Wales only, the Wales and England and the UK clauses.

Actions for the ELL Committee

To note and respond to the provisions of the Education Bill.

Contact Point

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Annex A

### CLAUSE BY CLAUSE BREAKDOWN

	Clause Number	England and Wales	England only	Wales only	UK
Part 1: Chapter 1. School Inspectors and School Inspections: England	1 – 11		X		
Chapter 2. Procedure for inspections under Chapter 1	12 – 17		X		
Chapter 3. School Inspectors and School Inspections: Wales	18 – 30			X	
Chapter 4. Procedure for Inspections under Chapter 3	31 – 42			X	
Chapter 5. Schools causing concern	43 – 45	X			
Chapter 6. Other Inspections: England and Wales	46	X			
	47 – 48		X		
	49			X	
	50	X			
	51			X	
	52 – 53	X			
	54 – 56			X	
Chapter 7. Supplementary	57 – 60	X			

	61			X	
	62	X			
Part 2: School organisation	63	X			
	64 – 66		X		
	67 – 70	X			
Part 3: Training the school workforce	71 - 77	X			
	78		X		
	79			X	
	80 – 81	X			
	82 – 88			X	
	89 – 97	X			
Part 4: Miscellaneous	98	X			
	99		X		
	100	X			
	101		X		
	102 – 103	X			
	104 – 105				X
	106 – 114	X			
	115			X	
Part 5: General	116 – 124	X			
Schedules					
	1		X		
	2 – 4			X	
	5	X			
	6			X	
	7 – 9	X			
	10 - 11		X		

## WALES ONLY CLAUSES

## (a) Appointment of HMCI

## Clause 18(6)

## Effect

To create a statutory duty that requires the Assembly to provide advice on the appointment, re-appointment or removal of the Chief Inspector.

## Background

The Chief Inspector is currently appointed by Her Majesty – by Order in Council under section 4(1) of the Schools Inspections Act 1996. This arrangement is continued under clause 18 of the Bill. She can only be removed by Her Majesty on the grounds of incapacity or misconduct (Section 4(4) and clause 18 (4)). At the moment, there is no statutory requirement on any person to provide advice on the appointment. In practice and by convention, the Secretary of State for Wales has responsibility for advising the Queen and for seeing the Order through the Privy Council. The Order names the Chief Inspector and specifies a period of office lasting no more than five years. By informal agreement with the Wales Office, the current Chief Inspector was appointed on the advice of the First Minister through the Secretary of State.

## (b) Terms and Conditions for HMI

## Clause 18(7)

## Effect

Makes the terms and conditions of HMI (as is currently the case with all other Estyn staff) subject to Assembly approval.

## Background

Non-HMI staff are appointed by the Chief Inspector subject to Civil Service rules and the approval of the Assembly as to numbers, terms and conditions. Matters related to the Chief Inspector's remuneration and by implication her terms and conditions are for the Assembly with the approval of the Minister for

the Civil Service. However, in relation to HMIs, the position is not clear.

The legal advice is that this probably means that the Chief Inspector has to determine the terms and conditions of HMIs on behalf of Her Majesty. Currently there is no statutory requirement for the Chief Inspector to seek the Assembly's approval for terms and conditions for HMI.

### (c) Estyn Advisory Panel

#### Clause 21

##### Effect

The Assembly is to be given a power to make regulations which will provide for the establishment of a board with the function of advising the Assembly on any matter relating to the functions of the Chief Inspector.

##### Background

The proposal would provide the Assembly with a new regulation-making power enabling it to establish a Panel to advise the Assembly on matters relating to the functions of the Chief Inspector. The clause allows the Assembly to make provision as to the establishment of the Panel and its functions, including provision as to the appointment of members, remuneration and allowances, the preparation of reports and a requirement for Estyn and the Panel to co-operate with each other and, in particular, by allowing access to the Chief Inspector's staff and papers.

The Panel would provide advice to the Assembly in discharging its various duties in relation to Estyn. The detail would be subject to decisions as part of the framing of regulations but it is anticipated that the Panel's remit would include advice on the handling of any complaint lodged against the Chief Inspector. There is no current mechanism for such complaints to be considered if they fail to fall within the remit of the Welsh Administration Ombudsman. In addition, the Panel might provide advice in meeting the Assembly's statutory obligation to approve Estyn's Annual plan.

The powers proposed would be limited to the establishment of the Panel and a requirement for Estyn to co-operate with the Panel.

### (d) Careers Wales

#### Clauses 54 to 56

##### Effect

To extend the remit of the Chief Inspector to include inspection of the services provided by Careers Wales.

## Background

1. Careers Wales, the national careers service in Wales, was established in April 2001. Although it is an all-age service its work is primarily directed towards provision of careers advice and guidance for young people and, in particular, young people aged 14 - 19 in education and making choices about learning and career options.

The careers services provided by Careers Wales are inspected by Estyn under sections 35 and 35A of the Teaching and Higher Education Act 1998. However, this legislation provides Estyn with limited powers. In particular, the Chief Inspector does not have the powers to determine the programme of inspection or to produce independent reports on inspection findings.

This amendment will draw inspection of the services provided by Careers Wales within the formal remit of the Chief Inspector.

Annex C

## SCHOOL INSPECTION FRAMEWORK

### PART 1: Chapters 3, 4 and 5

#### School Inspections

#### Clauses 18 – 45

#### Effect

Chapters 3 and 4 re-enact, with minor modification, the Schools Inspections Act 1996 in its application to Wales, while giving the Assembly the power to introduce the reforms in the future, should it so determine.

## Background

School inspections in Wales are the responsibility of Her Majesty's Chief Inspector of Education and Training in Wales (HMCIW). Following extensive consultation, a new inspection framework was introduced in Wales from September 2004. The framework and associated inspection arrangements will be applied to most areas of inspection within the remit of HMCIW. Estyn has issued guidance on aspects of the new framework including notice of inspection, the role of self-evaluation and matching the scale



of inspection to need. It is appropriate that the new framework be given the opportunity to embed before considering the introduction of significant changes to the inspection system.

### Registered Inspectors

The provisions will give the Chief Inspector in Wales greater flexibility in her power to use HMIs, additional inspectors or registered inspectors to conduct routine inspections (clause 27(1)). She will have discretion over whether to register an inspector, rather than being required to register an inspector who meets the criteria.

### The Statutory Purposes of Inspection

The Chief Inspector’s duty to keep the Assembly informed about the spiritual, moral, social and cultural development of pupils at schools in Wales is to be extended as in England to include how the quality of education provided by the school meets the range of pupils needs, and also the contribution that the school makes to the well-being of pupils at the school in terms of the five outcomes for children defined in the Children Act 2004 (clause 27(5)).

### Schools Causing Concern

There will be a reduction in the number of statutory categorisations through the introduction of a new statutory category of schools which require ‘significant improvement’, abolishing the existing categories of a school with serious weaknesses or an inadequate sixth form. The category of special measures will remain (clauses 43 – 45). The provisions apply to Wales and England.

Annex D

## SUMMARY OF NON-INSPECTION PROVISIONS

PROVISION	EFFECT

<p><b>PART 2: SCHOOL ORGANISATION</b></p> <p>Clauses 63 – 70 [clauses 63 to 66 England only]</p>	<p>To amend and extend, in relation to England only, the school competition provisions introduced in the Education Act 2002. For Wales, the Bill provides that proposals for the establishment of new schools may relate to the establishment of schools as federated schools and prohibits a Welsh LEA establishing a school in England and vice-versa.</p>
<p><b>PART 3: TRAINING THE SCHOOL WORKFORCE</b></p> <p>Clauses 71 to 97 [clause 78 England only]</p>	<p>To extend the powers of the TTA to cover development of whole-school workforce; to enable the TTA to operate in Wales, at the Assembly’s request; and to relax some of the bureaucratic controls to enable improved effectiveness. This Part also re-enacts sections of the Education Act 1994 in their application to the Higher Education Funding Council for Wales.</p>
<p><b>PART 4: MISCELLANEOUS</b></p>	
<p><b>Funding of Maintained Schools</b></p> <p>Clause 98 and Schedule 16</p>	<p>To introduce three-year budgets for schools based around the academic year. It also provides for Schools Forums to be given decision-making powers relating to the composition of schools budgets and the formula for determining individual schools budget shares. The current statutory framework is retained for Wales only, but there are enabling powers that provide for the Assembly to introduce such a system in the future, should it wish.</p>

<p>Provision to Require LEA's to Set and Submit Targets</p> <p>Clause 99 [England only]</p>	<p>To enable the Secretary of State to require local authorities to set and submit educational attainment targets covering pupil performance and attendance</p>
<p>Annual Parents' Meeting</p> <p>Clause 100</p>	<p>To retain the current position in Wales with power to adopt system proposed for England should it wish.</p>
<p>Governors' Annual Report</p> <p>Clause 100</p>	<p>To retain the current position in Wales with power to adopt system proposed for England should it wish.</p>
<p>School Profiles</p> <p>Clauses 101 [England Only]</p>	<p>To introduce a School Profile in respect of England only.</p>
<p>Higher Education Provision in Schools</p> <p>Clause 102</p>	<p>To enable schools to offer and deliver to their pupils, courses that are at a higher level than GCE Advanced Level.</p>
<p>Provision</p>	<p>Effect</p>
<p>Disposal of Land</p> <p>Clause 103</p>	<p>To set out the detailed circumstances in which foundation school trustees would be required to seek the National Assembly for Wales' consent to dispose of land.</p>

<p>Data Sharing – Education Maintenance Allowances</p> <p>Clause 104 to 105 [UK]</p>	<p>To set up an electronic data sharing exercise for verifying income related information supplied by an individual in support of their application for EMA.</p>
<p>Data Sharing – Eligibility for Free School Lunches or Milk</p> <p>Clause 106</p>	<p>To set up an electronic data sharing system for checking claimants’ entitlement to free school lunches utilising data from Inland Revenue and the Department for Work and Pensions.</p> <p>The main objectives of an electronic scheme are to reduce bureaucracy from schools and Local Education Authorities (LEAs) and to encourage take-up by reducing the stigma attached to the current application process.</p>
<p>Clauses 107 to 110</p>	<p>Supplementary provisions relating to information and data sharing and clarification of responsibilities for determining eligibility to FSM etc.</p>
<p>Supply of Information about School Workforce</p> <p>Clauses 109 and 110</p>	<p>To collect individual level information to create a "School Workforce Database" (SWD) and to facilitate analysis based on age, ethnicity, gender, disabilities, qualification, role and type of school.</p>

<p>Attendance at Alternative Educational Provision</p> <p>Clause 111 and 112</p>	<p>To provide a power to governing bodies to direct a registered child to attend alternative provision and allows for parents of such a child to be prosecuted or served with a penalty notice where they fail to attend the provision as directed.</p>
<p>PART 5: GENERAL</p> <p>Clauses 115 to 124</p>	<p>This Part makes general provisions about the extent of the Bill, the process for exercise of regulation making powers under the Bill and commencement.</p>