

National Assembly for Wales
Bill Summary

Education (Wales) Bill

July 2013

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Michael Dauncey and Alys Thomas

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Contents

1. Introduction	1
2. Background	2
2.1. Education workforce	3
2.1.1. Registration fees	3
2.2. Reform of the registration and approval of independent schools in respect of special educational needs (SEN)	4
2.3. Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities	4
2.4. School Term Dates	5
2.5. Appointment and removal of Her Majesty's Chief Inspector and appointment of HM Inspectors of education and training in Wales	6
3. The Bill	7
3.1. Education workforce (Part 2 of the Bill, Sections 2-41)	7
3.1.1. Rationale	7
3.1.2. Who will be registered	8
3.1.3. Current legislative position	9
3.1.4. Proposed role of the Education Workforce Council	9
3.1.5. Registration Fees	11
3.1.6. Membership of the EWC	11
3.2. Reform of the registration and approval of independent schools in respect of special educational needs (Part 3 of the Bill, Sections 42-43).	12
3.3. Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities (Part 3 of the Bill, Sections 44-48)	13
3.3.1. Current position	13
3.3.2. What is proposed by the Bill	14
3.3.3. Previous reviews of policy	15
3.3.4. Perceived problems with the current arrangements	16
3.3.5. How the Bill is intended to improve the process	17
3.4. School Term Dates (Part 4 of the Bill, Section 49)	18
3.5. Appointment and removal of Her Majesty's Chief Inspector and appointment of HM Inspectors of education and training in Wales (Part 5 of the Bill, Section 50)	19
4. Subordinate legislation	20
5. Reaction	21

Education (Wales) Bill

1. Introduction

Introduction date: 1 July 2013

Member in charge: Huw Lewis AM, Minister for Education and Skills

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Children and Young People Committee

Stage 1 reporting deadline: 22 November 2013

There are five key purposes of the Bill, which are to:

- widen the registration and regulation of education practitioners to cover not only teachers but the wider education workforce;
- reform and simplify the process for registering and approving the admission of learners with Special Educational Needs (SEN) to independent schools;
- improve the assessment of additional learning needs for learners post-16, to achieve better transition between school and further education and a less complex and bureaucratic system;
- change the way school term dates are set in order to harmonise the timing of these across Wales; and
- amend the process through which Her Majesty's Chief Inspector, and Inspectors, of Education and Training in Wales are appointed to Estyn.

2. Background

In his [Annual Statement on the Legislative Programme](#) on 17 July 2012, the First Minister said that there would be an *Education (Wales) Bill* that would include

requirements for the registration of the education workforce, reform of the statutory framework for children and young people with special educational needs, and the registration of children of compulsory school age who are home educated. The basis of the provisions within this Bill will be formed by the outcome of the public consultation on the requirements for registration of the education workforce, the consultation that sets out the proposals for reform of the legislative framework for special educational needs, and the consultation on the educational provision made by home-based educators.

A consultation entitled '[Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs](#)', was undertaken by the Welsh Government between 26 July and 19 October 2012. This proposed a range of reforms to the legislative framework for children with additional learning needs (ALN), including giving a statutory footing to the concept of ALN and replacing SEN statements with new integrated Individual Development Plans. It also outlined the proposals relating to providing post-16 education for learners with learning difficulties and/or disabilities.

Subsequently, in a [statement](#) on 26 September 2012 the then Minister for Education and Skills, Leighton Andrews, announced that **the SEN provisions would not be included** in the *Education (Wales) Bill* and would be taken forward in separate legislation within this Assembly. However, the particular proposals in respect of post-16 are contained in this Bill. To date, there has been no further announcement of when the wider ALN proposals will be legislated on.

Another subject that the First Minister said in July 2012 would be in the Bill, **the registration of children educated at home, is also not included**. That this would be the case was announced by the then Minister for Education and Skills in a [statement](#) on 21 December 2012 when he said that the proposals to legislate on this would be delayed pending further consideration. The Minister said that following a consultation held between 3 September and 23 November 2012 he had asked his officials to undertake a thorough analysis of the responses due to the high volume (over 550) that had been received.

From what was stated in the First Minister's statement in July 2012, it is therefore only the registration of the workforce and the post-16 element of additional learning needs (ALN) that are actually in the Bill. However, the related issue of admission of pupils with SEN into independent schools and that of harmonisation of school terms, both of which have been subject to consultation, have been added to the envisaged content of the Bill (in addition to the procedural issue of appointments to Estyn).

2.1. Education workforce

The Welsh Government has undertaken two consultations on its plans to reform the registration of teachers and the wider education workforce. It initially consulted on '[Proposals to amend the requirements for registration of the education workforce in Wales](#)' between December 2011 and March 2012. This set out proposals for the future of GTCW and sought views on the proposal to include other practitioners working in education in the requirement to register.

There were 94 respondents, with the Welsh Government's [summary of responses](#) saying 58 per cent agreed registration should be extended to the wider workforce and 3 per cent disagreed. However, 29 per cent are stated as being either unsure of the question or not giving a definitive answer.

A second [consultation](#) undertaken between 10 September and 19 October 2012 set out more detail relating to the functions and operations of a registration body. The Welsh Government's [summary of responses](#) stated that, of the 47 respondents, 77 per cent generally agreed that on the whole the groups identified were the correct ones and 2 per cent did not believe that there was a need to extend registration beyond teachers. 21 per cent were either unsure of the question or not give a definitive answer.

2.1.1. Registration fees

The initial consultation asked whether there should be a flat-rate fee for registration payable by all those registered (as is currently the case for teachers registered with the GTCW) or if differentiated fees should apply. Of the respondents, **53 per cent of respondents were in support of a differentiated rate fee** with 12 per cent favouring a flat-rate fee and 36 per cent either unsure of the question or not giving a definitive answer.

Subsequently, the second consultation sought views on different fees based on the categories for which practitioners were registering. Of 47 respondents, only 28 per cent agreed that the indicative fee levels put forward represented a fair differentiation between the categories, with 57 per cent showing concerns with the level of the differentiated fee or not giving a definitive answer.

As a result, **the Welsh Government proposes a variable-rate registration fee based on salary bandings and pension contributions**. This would see a sliding scale of the fee payable between those on the lowest and highest incomes. **The actual arrangements for setting registration fees will be decided on through regulation making powers** given to Welsh Ministers in the Bill. The Welsh Government has said it has considered the various comments in relation to registration fees and said that further consultation on these regulations would take place in early 2014, subject to the Bill becoming law.

2.2. Reform of the registration and approval of independent schools in respect of special educational needs (SEN)

These proposals were subject to a [consultation](#) by the Welsh Government between 20 September and 1 November 2012. A [summary of consultation responses](#) was published by the Welsh Government in June 2013.

This stated that **there were nine responses to the consultation, with five agreeing that s347 of the *Education Act 1996* should be repealed**, which would remove one of the two registration processes for independent schools to admit pupils with SEN. One (unnamed) respondent disagreed with this proposal whilst the remaining three were said to neither agree nor disagree.

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

As stated above, consultation on these proposals was undertaken as part of the wider exercise in relation to establishing the concept of ALN in legislation and a reformed assessment framework for SEN. Chapter 10 was the relevant part of the consultation document [‘*Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs*’](#), and said the following:

We propose that local authorities should be responsible for assessing the need for, securing and funding specialist further education provision, including residential accommodation, for learners with learning difficulties and/or disabilities. Existing funding will be transferred from the Welsh Government to Revenue Support Grant to support them in this duty.

206 responses were received to the consultation which contained one specific question about whether local authorities should take over the responsibility for post-16 specialist placements.

A [summary of the consultation responses](#) in respect of the proposals for post-16 was published by the Welsh Government in June 2013. This states that **45 per cent agreed in principle with this change, 10 per cent disagreed, and 45 per cent neither agreed nor disagreed.**

The subject of the most frequent concerns was funding and how this would be passed to local authorities to finance the additional responsibilities they would be given. Concerns were also raised regarding transition planning and timely decision-making, with locating responsibility for assessing need, securing and funding specialist provision in one place described in the consultation summary as being important for stakeholders.

2.4. School Term Dates

Consultation was undertaken between 3 September and 26 November 2012 on the proposals to harmonise school term dates. 55 responses were received.

In answer to arguably the most critical question, **whether the Welsh Government should have a discretionary power to intervene** where local authorities and governing bodies of voluntary aided and foundation schools have failed to agree common school term dates, the Welsh Government says that there was broad support. The Welsh Government's summary of responses shows that the numbers of responses were actually, **of 45 respondents who answered this question, 28 agreed, 13 disagreed and 4 neither agreed nor disagreed.**

Estyn was supportive of this proposal, commenting that the 'the Minister should have the right to intervene if local authorities and school governing bodies fail to agree'.

There were some concerns over the implications for faith schools in respect of their choices over when they set the holiday period for Easter. This is because faith schools tend to prefer to include Holy Week up until Maundy Thursday (the day before Good Friday) in the school term and have their holiday period after this point, something which would not be guaranteed due to the Welsh Government's preference for terms of equal length.

The question which most divided the respondents was whether, even after school term dates had been agreed by the bodies responsible, the Welsh Government should have the power to direct them to set alternative dates or allow for some variation between them based on local factors.

The EM does not specifically refer to this but more respondents disagreed than agreed. Of the 43 respondents who provided a response to this question, 17 respondents agreed with the proposal, 20 respondents disagreed and 6 neither agreed nor disagreed.

The Welsh Government says in the EM that, in light of the consultation responses, it gave further consideration to the issue. **It has concluded that, concerns and contrary views notwithstanding, the advantages of the proposals outweigh the disadvantages.**

2.5. Appointment and removal of Her Majesty's Chief Inspector and appointment of HM Inspectors of education and training in Wales

No general consultation has been carried out on this change which is technical and procedural in nature. However, the Secretary of State for Wales and the Lord President of the Privy Council (also the Deputy Prime Minister) have both agreed to the proposals. The Welsh Government says it has also consulted with Her Majesty's Chief Inspector who is also content with the proposals.

3. The Bill

The Bill is divided into five parts.

- **Part 1** (Section 1) gives an **overview** of the provisions contained in the Bill;
- **Part 2** (Sections 2-41) concerns (the registration and regulation of) the **Education Workforce**;
- **Part 3** (Sections 42-48) deals with the two elements relating to **persons with learning difficulties**;
- **Part 4** is entitled **Miscellaneous Provision** and covers school terms and the appointments to Estyn; and
- **Part 5** makes **general provision** in relation to the Bill.

3.1. Education workforce (Part 2 of the Bill, Sections 2-41)

Currently, of the education workforce in Wales, only teachers are required to register with a professional body in order to practice. This is done through the General Teaching Council for Wales (GTCW) and relates only to teachers in maintained schools in Wales.

The Bill proposes a framework so that other sectors of the wider education workforce will also be required to register.

3.1.1. Rationale

The Welsh Government says that the Bill recognises the much closer working that now exists between different sectors of workers within education. It believes the new arrangements would be more in line with the established custom across many industries, under which practitioners register with a body that sets and maintains professional standards.

In the Explanatory Memorandum (EM), the Welsh Government sets out a context within which the education workforce in Wales has changed significantly in the last ten years. It cites the collaboration between schools and post 16 providers to **deliver wider options to learners** and reforms such as the **Foundation Phase and 14-19 Learning Pathways**, which require practitioners including learning support staff to work together, as key factors.

Consequently, the Welsh Government believes that **to limit the scope and functions of a professional registration body in education (currently the GTCW) to teachers in maintained schools**, as is the current legislative position, **looks ‘anomalous’**. The Welsh Government also says that it ‘undermines the vital part that all education practitioners play in delivering education for learners and raising standards within a wider education workforce’.¹ It also says that having different requirements and regulation of education professionals does not assure the public that they all exhibit similar high standards of professional conduct and competence.

3.1.2. Who will be registered

The Bill sets out the framework for, and the remit of, a newly named and reformed registration body. It does this by changing the name of the current registration body to the **Education Workforce Council** (replacing the GTCW) and to extend registration, qualification and training requirements to the wider education workforce.

Initially, the obligation to register will be extended beyond teachers in maintained schools to:

- School learning support workers; and
- Further Education teachers and learning support workers

In the future, the Welsh Government’s intention is to **further extend the obligation** (using regulation making powers provided by the Bill) to:

- Work based learning (WBL) tutors and learning support staff; and
- Youth workers.²

There are **38,000 teachers** working in maintained schools in Wales who are required to register with the GTCW. A further **21,300 school support staff** and **8,810 teaching staff** in FE (full time equivalent)³ are not currently required to register but would be required to register under the new arrangements set out in the Bill.

¹ *Education (Wales) Bill – Explanatory Memorandum*, July 2013, p8

² These categories are defined in both pages 8 and 10 of the EM

³ 2010/11 figures quoted in the Explanatory Memorandum, p8

3.1.3. Current legislative position

The *Teaching and Higher Education Act 1998* (the 1998 Act) makes provision for a registration system for teachers administered by the GTCW. The 1998 Act sets out the principal aims of the GTCW, which are to ‘contribute to improving the standards of teaching and the quality of learning’ and to ‘maintain and improve standards of professional conduct amongst teachers’, in the interests of the public. The 1998 Act also makes provision about the constitution, membership, staffing, governance and finance of the GTCW.

In addition, there are regulation making powers for Welsh Ministers regarding registration fees and giving authority to teachers’ employers to deduct, or arrange for the deduction, from salaries of any fee payable and remit this to the GTCW.

Currently, teachers registered with the GTCW are obliged to pay a £45 annual fee although the Welsh Government subsidises the reimbursement to teachers of £33 of this amount.

3.1.4. Proposed role of the Education Workforce Council

The Welsh Government wants the new Education Workforce Council (EWC) to be a key partner in supporting the improvement agenda to help drive up standards. It intends to set it the following two aims:

- To contribute to the improvement of standards of teaching and the quality of learning in Wales; and
- To maintain and improve standards of professional conduct amongst teachers and others in the education workforce who support teaching and learning.

The proposed **main functions of the EWC**, which are detailed on pages 9-16 of the EM, are summarised below.

The EWC will take responsibility for the **provision of advice and promotion of careers** for the whole education workforce. Previously, Welsh Ministers have relied on contracts with relevant organisations in England to promote teaching and the intention now is to undertake this work on a Wales only basis.

The ECW’s **registration of members of the education workforce** will consist of the person’s name, contact address, employment, qualifications and professional development. The individual and prospective employers will have access to this information whilst the general public will only be able to check if a person is registered or not.

Specified work will only be able to be undertaken by a person registered to undertake that work. **Individuals registering with the EWC will be assigned to a category** and will only be eligible if they have satisfactorily completed any induction period that is necessary or satisfy the requirements for provisional registration; there is no restriction such as a disciplinary order or disqualification; and the EWC is satisfied as to their suitability for the category.

The categories will be the following:

- School teachers;
- School learning support workers;
- FE teachers; and
- FE learning support workers.

The Welsh Government will have regulation making powers to alter these categories, for example in respect of the two additional categories it wishes to add in the future (Work Based Learning tutors and learning support staff, and youth workers).

Induction and appraisal arrangements are described as being at different stages of development for each of the categories, with these being especially established for teachers. Newly Qualified Teachers (NQTs) have a further induction period that they must undertake before they acquire Qualified Teacher Status (QTS), which usually consists of a full school year or three school terms. Induction includes a programme of professional development, monitoring and support based around the identified core priorities to teaching and learner outcomes. NQTs are also supported by a mentor throughout their induction and assessed against the Practising Teacher Standards.

In addition, teachers are subject to an ongoing performance management as part of a school's improvement plan and the Welsh Government believes that well designed systems of induction and appraisal are essential for the wider education workforce. The Bill gives Welsh Ministers the power to make provision about induction and appraisal and for different arrangements to be in place for different categories.

Currently, the General Teaching Council for Wales maintains a Code of Conduct and Practice for registered teachers. The Bill would require the Welsh Government to prepare and publish a Code for the wider education workforce. This Code will be able to set different standards for the different categories.

The GTCW currently carry out disciplinary functions and are required to investigate and hear cases of:

- Unacceptable professional conduct;
- Serious professional incompetence; and
- Where a teacher has been convicted at any time of a relevant offence or if this is apparent.

The EWC will undertake this disciplinary function for the whole of the registered education workforce, meaning that there will be a broader range of practitioners covered by these potential disciplinary procedures. Where the EWC finds someone guilty it may make a disciplinary order, which can range from a reprimand to a full prohibition order making them ineligible for registration.

The EWC will also be required to **maintain records and information** about the people they register. It will receive information from the Welsh Government that is necessary for its functions and will also be required to provide the Welsh Government with information for statistical and other purposes. The EWC will also have a right to information from employers such as where they have ceased to employ someone on the grounds of the above three disciplinary matters.

3.1.5. Registration Fees

The Welsh Government has sought views on the registration fee level as part of two consultations it has held on registering the wider education workforce. The background to this was discussed in section 2.1 and the Welsh Government says that the comments it received raised some important issues and highlighted the need for further and more detailed consultation of the registration fees. However, following the responses to both consultations, which did not show clear support for either a flat-rate fee or single rates each category, the Welsh Government is proposing this is based on the income of persons registered.

Annex 2 of the EM contains the results of modelling work that the Welsh Government has undertaken on possible arrangements for such a variable-rate registration fee that is based on salary bands and levels of pension contributions. Under such an arrangement, those on the lowest incomes would pay the minimum or zero level fee with the rate increasing in accordance with the salary bands.

3.1.6. Membership of the EWC

Welsh Ministers will have the power to specify the number of members that the EWC will have and will appoint members, a majority of whom must be, or have recently been, registered persons. The EWC will elect its own chair from its appointed membership. The Bill enables Welsh Ministers to make regulations about the appointment of a Chief Officer.

3.2. *Reform of the registration and approval of independent schools in respect of special educational needs (Part 3 of the Bill, Sections 42-43)*

This is the first of two elements of the Bill which relate to additional learning needs and specifically seeks to reform the way in which **independent schools register to admit learners with special educational needs (SEN)**. Its objective is to reduce duplication and increase the information available about SEN provision in independent schools.

There are currently **two registration processes**. Firstly, any establishment wishing to operate as an independent school needs to apply to the Welsh Ministers under section 160 of the *Education Act 2002* (hereafter 'the 2002 Act'); and, secondly, an independent school that wishes to admit a pupil with a statement of SEN must be approved to do so by the Welsh Ministers under section 347 of the *Education Act 1996* (hereafter 'the 1996 Act').

Where independent schools do not have a general approval to admit pupils with SEN, local authorities may also apply to place a pupil with a statement of SEN in that school. In such cases, they must apply on an individual case by case basis per pupil. The Welsh Government receives an average of 12 applications per year under s347 of the 1996 Act for such consent. Following receipt of a letter from the local authority along with a copy of the child's statement of SEN, the Welsh Government seeks advice from Estyn on whether the placement is suitable. This process takes an average of six to eight weeks.

Independent schools' applications under s160 of the 2002 Act must include specific prescribed information including whether they admit pupils with SEN regardless of whether they have a statement. It is this requirement the Welsh Government feels is particularly important for the purposes of the Bill.

The Welsh Government wishes to remove the duplication of registration requirements and create a single process. This would be achieved by repealing s347 of the 1996 Act in its application to Wales whilst amending s160 of the 2002 Act, under which there would then be a single process.

The Welsh Government says that this would have benefits of removing the time consuming and bureaucratic process of individual applications per pupil and local authorities being able to make their own judgement on individual schools that already had approval without the need for Welsh Ministers' consent. **All independent schools wishing to admit learners with statements of SEN would also, in future, be required to specify the principal type of SEN education that they provide.**

In addition, schools that have a general approval to admit pupils with statements with SEN receive annual monitoring visit from Estyn whereas schools that only have individual consent in respect of a pupil do not. **All schools registered under the amended s160 process would fall within the scope of Estyn's monitoring arrangements and be subject to an annual monitoring visit**, which the Welsh Government says will increase transparency and the information available.

3.3. Responsibility for assessing the need for and arranging specialist post-16 education for learners with learning difficulties and/or disabilities (Part 3 of the Bill, Sections 44-48)

The Bill seeks to improve the assessment of additional learning needs for learners **post-16** in order to achieve better transition between school and further education; better liaison between schools, local authorities, further education (FE) colleges and specialist providers; and a less complex and bureaucratic system.

3.3.1. Current position

Welsh Ministers currently have a general duty under the *Learning and Skills Act 2000* (hereafter 'the 2000 Act') to secure proper provision (for those between 16 and 19) and reasonable (for those over the age of 19) facilities for education and training for learners.

In particular, s140 of the 2000 Act places a **duty** on the Welsh Government to make arrangements for **young people under the age of 19 who have a statement of SEN to be assessed**, where it believes they are **likely to leave school at the end of their last year of compulsory schooling** to go on to post-16 or higher education (HE) or training. This assessment must be carried out during the final year of compulsory education and sets out a person's educational and training needs as well as the provision required to meet those needs.

The Welsh Government also has a **power under s140** of the 2000 Act to arrange for an assessment to be conducted of **any person under the age of 25** where it appears they have learning difficulties and where they are receiving, or are likely to receive, post-16 education or HE or training. This applies **even where they do not have a statement of SEN** and is designed to enable assessments to be carried out in cases where learning difficulties were developed shortly before or after leaving school, or they had learning difficulties which did not result in a statement of SEN being issued.

Currently, these assessments are conducted by Careers Wales through an annual contract with the Welsh Government. Learners below the age of 16 with a statement of SEN have the right to engage in dispute resolution if they feel that the statement does not accurately reflect their needs or the provision detailed in it

is not being met. Their decision to do this does not affect their right to subsequently appeal to the SEN Tribunal for Wales (SENTW) if this initial process does not achieve a resolution of the complaint other than those in mainstream FE settings.

3.3.2. What is proposed by the Bill

Local authorities will be given the duty in respect of young people aged under 19 and the power in respect of people aged under 25 (as outlined above). The conducting of these assessments will therefore cease to be undertaken by Careers Wales under contract with the Welsh Government.

The Welsh Government believes this will deliver greater transition and continuity as local authorities currently manage the process of assessment and provision for pupils up to the point of compulsory school age under the SEN Code of Practice for Wales. They are therefore considered to be better placed to do this as the learners and their needs will already be familiar and known to the local authority. The Welsh Government says this will resolve the existing separation of the funding and management decisions, i.e. between those who secure and arrange the provision and those who assess the learners' needs. This has been identified as unsustainable⁴ and a fundamental issue which needs to be overcome.

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

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

Local authorities will not be responsible for securing provision where the report resulting from an assessment determines that a learner's educational and training needs can be met in an FE college, including where a learner requires additional or specialist support to meet these needs. Where a learner's needs are sufficiently complex, FE colleges currently submit claims to the Welsh Government for supplementary or exceptional funding to meet these. This arrangement would continue under the Bill.

⁴ [Report of the Ministerial Task and Finish Group on future arrangements for funding post-16 additional learning needs in schools and further education](#), September 2010 [accessed 19 June 2013]

Local authorities will be under a duty to make arrangements for dispute resolution services to be available. Where a satisfactory outcome is not reached by the dispute resolution, there will be a new right of appeal to the SEN Tribunal for Wales (SENTW). This will resolve the imbalance between the right of appeal to SENTW which exists for pupils who remain in school beyond the compulsory age and the lack of this right for pupils assessed under s140 of the 2000 Act (those likely to leave after compulsory education).

3.3.3. Previous reviews of policy

The need for changes in this area is relatively well established, which the Welsh Government itself recognises. It cites in the EM the work of two previous Assembly Committees which highlighted concerns around transition and made the case for significant change.

In March 2007, the Education, Lifelong Learning and Skills Committee [reported](#) on part 3 of its **policy review of SEN, which was on transition. Some of the concerns it highlighted centred on the need for a more learner-centred approach and better information sharing and collaboration between agencies. The Committee reported that the system was overly complex and not sufficiently learner focussed.**

The Enterprise and Learning Committee considered two petitions in 2009 that related to post-19 students with additional learning needs and also highlighted shortcomings in relation to transition between stages of education. In its subsequent [report](#), it referred to a ‘convincing body of evidence on the need for transition planning to happen earlier than currently appears to be the case in most instances’.

In 2010, a Ministerial Task and Finish Group found that the present system could not continue and that the separation of the funding and management decisions was not sustainable. In its [report](#), the Group recommended that local authorities should take over responsibilities in these areas. The EM says that ‘ultimately, it was a clear message from the group that the learner could achieve benefits if better planning of provision took place’.⁵

⁵ *Education (Wales) Bill - [Explanatory Memorandum](#)*, July 2013, p26

3.3.4. Perceived problems with the current arrangements

The EM sets out the current practice undertaken in respect of the assessments under s140 of the 2000 Act and highlights shortcomings that point to a need for improvements. These centre on:

- An analysis of the outcomes of the assessments carried out by Careers Wales in 2011/12;
- Problems with the current role of Careers Wales as the lead co-ordinator in the s140 process;
- The ending of local authorities' role and responsibility once students leave school to go to FE and HE or reach 19; and
- An imbalance in the rights of appeal available to pupils.

In academic year 2011/12, Careers Wales carried out 1,398 assessments. 85 of these resulted in individual applications to the Welsh Government for funding at specialist colleges; 166 of the assessments were used by FE colleges as evidence for claims for exceptional funding to make suitable provision for a learner's needs; and in the case of the remaining 1,147, the learner should have had their needs met in line with the assessment by their relevant learning provider, although a minority may not have continued their education for some reason.

Of the 85 individual applications for funding at specialist colleges, **only 59 per cent were processed in time** for learners and their parents to be informed of the decision by the end of July for a September course start. **The Welsh Government says that this was mainly due to delays caused by two factors;** firstly, **insufficient information in the application** to make a decision and further details having to be requested (as occurred in 82 per cent of cases), and secondly, the **time taken to negotiate with local authorities and/or local health boards** when the application resulted in jointly funded provision (as occurred in 77 per cent of applications).

The EM identifies a number of problematic factors in Careers Wales' undertaking of the assessments, including their lack of prior knowledge of learners' needs or the provision made under the SEN Code of Practice to meet those needs. Furthermore, Careers Wales' primary role is to provide careers advice and guidance and their role in producing assessment reports has relied upon them co-ordinating advice and professional judgement from other sources. According to the EM, **Careers Wales is therefore not in a position to make an objective comparison of options available to meet a learner's needs.**

Given local authorities do not have the responsibility for assessing and meeting the needs of learners with additional learning needs once they reach 19, or leave schools to enter FE or HE, the Welsh Government says this has disadvantages for the following reasons. There is **little incentive for local authorities to proactively engage** in the assessment of needs or identification of provision suitable to meet them. Also, there is no benefit to them of working with local FE colleges to plan ahead and to consider the best ways of meeting learners' needs, as the cost of such provision is met by the Welsh Government.

Whereas pupils who remain in school beyond the compulsory age have the right to appeal to the SENTW regarding their statement, or indeed if this has not even been undertaken, **no such comparable right exists for those who leave school and access FE or HE**. Therefore, under the current arrangements, a learner over compulsory school age appears to have greater rights if they remain in school than if they leave and continue their education in an FE college.

3.3.5. How the Bill is intended to improve the process

The Welsh Government anticipates that the problems and shortcomings highlighted in the above section will be addressed by this Bill. It believes that local authorities are better placed to deliver on the duty and power provided by s140 of the 2000 Act as they can ensure joined up working between education and social care teams and will have closer links with local health boards and other local providers of care and support. **The fundamental issue of having separate bodies managing the assessment to those funding and securing the provision would also be resolved.**

The EM refers to wider reforms of legislation in respect of additional learning needs that are currently being considered and that the changes in this Bill will help 'pave the way' for these. The wider context of additional learning needs, of which these post-16 proposals are part, was discussed further in section 2.

In summary, the Welsh Government says that this element of the Bill will address issues of poor and consistent transition planning, lack of collaboration and cooperation, the need to increase local provision and ensuring there is value for money in the commissioning process.

3.4. School Term Dates (Part 4 of the Bill, Section 49)

Currently, **school term dates are set by local authorities** for community, community special, voluntary controlled and nursery schools, and by **governing bodies** for voluntary aided and foundation schools.

The Welsh Government highlights the **inconvenience and childcare costs caused to families** who may have children attending schools with differing school terms or where parents work in schools that do not have the same term dates as their child's. The commonest cases where there are differences in term dates is across local authority boundaries or between faith schools and other schools within the same local authority area, for example around Easter.

The Bill seeks to harmonise school term (and therefore school holiday) dates across Wales through placing a responsibility on local authorities and governing bodies of voluntary aided and foundation schools in Wales to work together to co-operate and co-ordinate with each other on term dates.

Local authorities and governing bodies are already encouraged to work together when setting school terms, including through challenge by the WLGA, but this has frequently been unsuccessful. The Welsh Government therefore believes that legislation is necessary to ensure harmonisation of school terms although the Bill will still allow for variations occurring very occasionally and where they can be fully justified.

However, the Bill retains the position whereby local authorities and governing bodies (in respect of voluntary aided and foundation schools) set the school term dates and the onus will still be on them to reach agreement. **Crucially, where a consensus cannot be reached, Welsh Ministers will have a discretionary power to direct the bodies responsible and intervene where necessary by telling them what their school dates must be.**

Even where dates have been agreed between the bodies themselves and there is no dispute to resolve, **Welsh Ministers will be able to exercise their discretionary power if they have reason to believe these need amending.** The need to make sure that terms are as equal in length as possible is given in the EM as an example of such a circumstance. Welsh Ministers will also allow variations in dates where there are good reasons such as a major event taking place in a local area, with the Ryder Cup held in Newport in 2010 given as an indicative example.

In contrast, the UK Government's [*Draft Deregulation Bill*](#) proposes to **transfer all responsibility for determining term dates** in community, voluntary controlled and community special schools and maintained nursery schools in England **from the local authority to the governing body**. The governing body of all such maintained schools in England would then be responsible for determining their school's term and holiday dates each year.

3.5. Appointment and removal of Her Majesty's Chief Inspector and appointment of HM Inspectors of education and training in Wales (Part 5 of the Bill, Section 50)

This element of the Bill is a procedural one and relates to the process through which Her Majesty's Chief Inspector (HMCI) of education and training in Wales is appointed as well as Her Majesty's Inspectors. These are positions with the inspectorate in Wales, Estyn.

Currently, these persons are appointed by Her Majesty by Order in Council on the recommendation of the Secretary of State who in turn receives advice from Welsh Ministers (in practice the First Minister). The Bill would remove the need for the process to involve the Secretary of State and the First Minister would advise Her Majesty, providing he/she was a member of the Privy Council.⁶

This will be put into effect by the repeal of section 19(6) of the *Education Act 2005* by this Bill. It will cover all Privy Council matters that are devolved to Wales which also include the removal of HMCI from office on the grounds of incapacity or misconduct.

The proposed legislative change follows agreement on this matter by the Lord President of the Privy Council (who is also the Deputy Prime Minister, the Rt.Hon. Nick Clegg MP) and the Secretary of State for Wales in July 2012, as well as a [**Ministerial Statement**](#) on 15 October 2012 by the Lord President of the Privy Council.

⁶ The [**Privy Council**](#) is the mechanism through which interdepartmental agreement is reached on those items of government business which, for historical or other reasons, fall to ministers as Privy Counsellors rather than as departmental ministers.

4. Subordinate legislation

The Bill contains a number of powers conferred on Welsh Ministers to make subordinate legislation. These are listed in chapter 5 of the EM and number 36 in total. The majority of these (23) are related to the education workforce, whilst nine concern the arrangements for assessing post-16 learners with additional learning need and there are three in respect of school terms. A further power is cross-cutting and makes provision for further changes to primary legislation.

Of the 36 delegated powers, five of these will be required to be exercised under the Affirmative procedure.

- Section 52 provides for Welsh Ministers to make an Order making potential consequential amendments to this and other primary legislation.
- Section 10(6) provides for Welsh Ministers to make an Order changing conditions on persons not eligible to register with the Education Workforce Council (EWC) to specify additional grounds of ineligibility.
- Section 28(4) provides for Welsh Ministers to make Regulations enabling a prohibition order against a teacher in England to also apply in Wales.
- Schedule 1 3(1) provides for Welsh Ministers to make an Order specifying the number of members the EWC is to have (or the maximum and minimum number of such members).
- Schedule 2 paragraph 2 provides Welsh Ministers with the power to add, amend or remove a category of registration or the descriptions of that category. It is this power that the Welsh Government would use if it wished to extend the requirement to register to work based learning tutors and support staff, as well as youth workers, as is its intention expressed in the EM.

5. Reaction

Introducing the Bill in Plenary, the **Minister for Education and Skills, Huw Lewis AM**, stated:

This Bill presents the opportunity, for the first time, to formally recognise the status and professionalism of all education practitioners working in Wales and the contribution they make to raising school standards and the outcomes for all learners. It will place a requirement on school teachers, school learning support workers, further education teachers and further education learning support workers to register with the reformed and renamed body, the education workforce council. This will establish a single coherent system for the wider education workforce.

The council will be given powers in this Bill to support the wider education workforce by carrying out a number of key functions. These include promoting careers in the education workforce, providing advice on matters including professional standards, continuing professional development and initial training, and investigating and taking action in relation to unacceptable professional conduct and professional incompetence.⁷

He further stated:

Transition from school is a challenging time and it can be even more so for those with learning difficulties. Through effective transition planning, all learners are able to achieve their long-term goals. Currently, local authorities cease to have responsibility for assessing and meeting the needs of learners with special educational needs once they leave school or reach the age of 19. Through this Bill, I want to improve these arrangements by making local authorities responsible for managing the transition and assessment process for these learners up to the age of 25. It will also make local authorities responsible for securing specialist further education provision where it is necessary to meet assessed education and training needs. These proposed changes will support better transition planning for learners moving from school to further education, and facilitate better liaison between schools, local authorities and FE colleges and specialist providers. In addition, the Bill will also include a right of appeal to the Special Educational Needs Tribunal for Wales.

The main objective of these changes is to bring about less complex and bureaucratic systems that better meet and protect the needs of this vulnerable group of learners. Following detailed consideration and consultation with key stakeholders, I am also proposing to introduce a single registration process for independent schools wishing to admit learners with a statement of SEN.⁸

⁷ RoP, 3 July 2013

⁸ RoP, 2 July 2013

Angela Burns AM, for the Welsh Conservatives, welcomed the Bill and said there was “much to commend in it” and that “we have great sympathy with the broad thrust of much of the Bill.” She particularly stressed support for the registration of the education workforce and the issues that arise in the provision of special educational needs education.⁹ She did, however, query why teachers and support workers in independent schools were not but youth workers were included in the ambit of the Bill.¹⁰

Simon Thomas AM, for Plaid Cymru, stated:

I will mention certain issues that do cause concern and where I feel that the Bill is perhaps deficient. First, I do not apologise for returning to the fact that workers in the independent sector are not included. It appears to me that there is an unfortunate back door for someone who is not qualified under the new council to work in an educational establishment in Wales.¹¹

He also queried whether the proposed council would be “sufficiently independent to provide advice to the Minister and to the wider sector without having to ask the Minister for permission.”¹²

Mr Thomas went on to comment on the wider power in relation to school term arrangements:

I think that we need to reconsider our current holiday pattern. I think that we need to set national holidays. I do not want to go down the route outlined in England today. However, every child in Wales needs to go to school on the same day and to be on holiday at the same times, in my opinion. We need to look at the pattern and length of school holidays, because there is evidence, especially in the transition from primary to secondary education, among boys and over the summer period, that there is a decline in standards. It is worth reconsidering that. Therefore, although the Minister says that the powers that he is seeking in this Bill are an exception, we in Plaid Cymru would want to strengthen that particular part of the Bill in order to provide that ability to vary as things develop.¹³

The Minister responded:

In terms of patterns of school holidays, I would dispute with the Plaid Cymru spokesperson that this Bill is necessarily the best place to have the debate around the pattern of school holidays in Wales. We are seeing the opening up of a free-for-all in England around school holidays that could cause all sorts of headaches for parents when it comes to arranging childcare as well as annual family holidays and so on. I certainly do not want to travel down that path. O ran patrymau gwyliau ysgol, byddwn yn dadlau gyda lloegr Plaid Cymru mai'r Bil hwn o reidwydd yw'r lle gorau i gael y ddadl ynghylch patrwm gwyliau ysgol yng Nghymru. Rydym yn gweld gwyliau ysgol yn dod yn gwbl benagored yn Lloegr, a gallai hynny achosi pob math o gur pen i rieni o ran trefnu gofal plant yn ogystal â gwyliau teuluol blynyddol ac yn y blaen. Yn sicr, nid wyf am fynd ar hyd y trywydd hwnnw.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ RoP, 2 July 2013.

If we were to consider the pattern of school holidays across Wales, we would need a proper consultative process on that as a free-standing issue, as it would be of such concern to parents and families across Wales. I would not necessarily be convinced—certainly not at this point in time—that the passage of this Bill would allow for a full and proper consultation up and down the country, with enough feedback from enough people to ensure that we had clarity in terms of the settled will, if you like, of the Welsh people when it came to altering the school year and the pattern of it.¹⁴

Aled Roberts AM, for the Welsh Liberal Democrats stated:

the real issue for me is whether or not a full cost assessment has been undertaken with regard to this particular legislation. Given the situation in Scotland, as I understand it, at the moment, and that the Minister's control over registration fees will be removed by this Bill, is there any indication as to the level of registration fee paid by teachers and other workers within the education workforce, and the costs that would then ensue to local authorities, because there are agreements at local authority level in most cases with regard to the payment of professional registration fees?¹⁵

The General Teaching Council for Wales stated:

The General Teaching Council for Wales welcomes the Education (Wales) Bill which has been laid before the National Assembly for Wales this afternoon. The Council has long-argued for professionally-led regulation to be extended to include other education professionals and the Bill goes a long way to that end. We will study the document in detail but we are pleased to see that many of our recommendations and suggestions seem to have been included.

There are, however, some areas in which we feel the Bill may fall short. For example, an opportunity has been missed to redress the anomaly which sees teachers working in private and independent schools being excluded from the requirement to be registered and regulated, and the safeguards provided by such registration.

It would also appear that the independence of the reconfigured Council is fettered by a number of requirements including permission from the Minister before it can offer advice to the Government or any other body. Furthermore, the Bill proposes that the profession's own Code of Conduct & Practice – previously conceived, devised and promoted by the GTCW – will be created by the Minister in the first instance.¹⁶

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ [General Teaching Council for Wales, Statement about Education \(Wales\) Bill, July 2013](#)