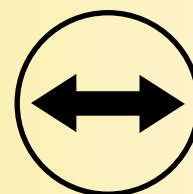


Delegation of 16-19 Provision Organisation Proposals to Local Authorities Consultation 2006

Consultation
Document



Date of Issue: 27 March 2006
Action Required: Responses by 2 June 2006

Organisation of
Post 16 Learning
Provision

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Adran Hyfforddiant ac Addysg
Department for Training and Education



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

- Title of Document:** Delegation of 16-19 Provision Organisation Proposals to Local Authorities Consultation 2006.
- Audience:** Local Authorities; Heads and Governing Bodies of Secondary Schools; Principals and Governing Bodies of Further Education colleges; The National Council for Education and Training for Wales; teaching unions and professional organisations; fforwm; Community Consortia for Education and Training; 14-19 Partnership Networks.
- Overview:** This document consults on the proposal to delegate to Local Authorities responsibility for developing proposals for the future organisation of 16-19 provision in maintained schools which includes voluntary and foundations schools, and further education.
- Action required:** Please respond by 2 June 2006. Responses can be sent to: education.training@wales.gsi.gov.uk or to the following address:
Mike Hopkins,
Department for Education Lifelong Learning and Skills,
Ty'r Afon,
Bedwas Road,
Caerphilly
CF83 8WT
- Further information:** Enquiries about this document should be directed to:
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- Additional copies:** Further copies may be obtained from:
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or from the Assembly's website: www.learning.wales.gsi.gov.uk
- Related documents:** The Further and Higher Education Act 1992
Government of Wales Act 1998
Learning and Skills Act 2000
Education Act 2002
The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004
The National Council for Education and Training for Wales (Transfer of Functions to the National Assembly and Abolition) Order 2005

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Contents List

	Page
Summary	2
Section 1: Background	3
Section 2: Proposal	5
Section 3: How the process would work post delegation	7
Section 4: Role of Community Consortia for Education and Training	9
Responses - Consultation Response Form	

Delegation of 16-19 Provision Organisation Proposals to Local Authorities Consultation 2006

Summary

The Education and Lifelong Learning Minister announced in Plenary on 22 November 2005 her decision to consult on delegating to local authorities responsibility for developing proposals, in partnership with all interested parties, for the future organisation of 16-19 provision in maintained schools, including voluntary and foundation schools, and further education.

The forthcoming merger with ELWa and the associated transfer of functions to the National Assembly 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 2006. These powers enable ELWa to make proposals to open, close, or alter a school sixth form, including that of a voluntary-aided school or foundation school, either to implement the recommendations of an area inspection or with a view to raising standards of achievement, increasing participation and/or expanding provision for 16 to 19 year olds.

The rationale that led to the creation of these powers was a need for an overarching body to take the lead in making proposals. The regulations were intended to ensure that ELWa took the lead, in collaboration with local partners, in local planning across a range of 16-19 providers to give all young people access to a full range of high quality and diverse post - 16 learning.

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.

The consultation period ends on 2 June 2006. Responses are to be sent to: Mike Hopkins, Department for Education, Lifelong Learning & Skills, Ty'r Afon, Bedwas Road, Caerphilly, CF83 8WT.

It should be noted that responses to the consultation will be made public. Normally, the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

Section 1 Background

Purpose of the consultation

1.1 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 and the creation of the Department for Lifelong Learning and Skills (DELLS).

1.2 The Welsh Assembly Government is committed to establishing effective collaboration both with and between local stakeholders in providing a wide range of learning opportunities and career choices for all young people. It sees the organisation of 14-19 learning including post-16 provision in maintained schools and FE institutions as a prime factor influencing the opportunities and choices available. It therefore proposes to invite the local authorities to take a lead in building a consensus within and between their respective areas as to the structure of post-16 provision that will best facilitate these objectives. The Assembly Government will expect to see action being taken by local authorities to bring forward proposals once such a delegation has been made; will support and monitor the process of review and the development of proposals (without prejudice to the decisions to be taken locally on the proposals to be pursued and any Ministerial determination); and will determine proposals as part of the statutory process. The Assembly Government will therefore retain a strategic role, whilst ensuring that the assessments of need and the development of proposals to meet those needs are undertaken locally.

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

1.3 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 community schools, voluntary schools and foundation schools) under the same Act (as amended by the Education Act 2002).

1.4 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.

1.5 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 local authorities to make proposals themselves in respect of community schools through their own powers under the School Standards and Framework Act 1998 e.g. where such reorganisations might extend beyond the boundaries of the local authority concerned and/or involve a voluntary or foundation school.

1.6 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.

1.7 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 2006.

ELWA's existing powers in relation to Further Education institutions

1.8 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.

1.9 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.

1.10 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.

Section 2 Proposal

2.1 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 their role in the strategic planning of post-16 education both in and between their respective areas.

2.2 This proposition for delegating the power from the Minister for Education and Lifelong Learning 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 provisions 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 with other local stakeholders.

2.3 The proposed delegation arrangement post 1 April 2006 would accord with the current procedures for developing, consulting upon and publishing proposals for reorganisation except that, where previously ELWAs 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

2.4 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.

2.5 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 retain 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 provided for proposals to be made either by one authority with the agreement of another or jointly by two (or more) authorities in circumstances where the proposals embraced provision serving more than one local authority area. In such circumstances proposals might be drawn up either by one authority taking the lead and drafting proposals for others to consider or via the establishment of a joint committee between the local authorities concerned. The Assembly Government would welcome views on whether the establishment of joint committees in such circumstances should be a required part of the process of developing proposals or a matter for the local authorities concerned to determine themselves, depending on the extent of cross-boundary interest involved.

2.6 The effect of the delegation of functions would be to extend local authorities' 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.

2.7 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 Learning 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.

2.8 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 local authorities' 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.

2.9 Similarly, sixth form 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 local authorities formally making the proposal in the future.

2.10 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 a local authority to reorganise community school provision under the Schools Standards and Framework Act 1998 would not be affected by this proposal, nor would the delegation extend more generally to the reorganisation of further education institutions in circumstances unrelated to reviews of sixth form provision.

2.11 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. Proposals which could not demonstrate appropriate collaborative working and consensus support would be unlikely to obtain Ministerial approval.

Section 3 How the process would work post delegation

3.1 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.

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

- local authority brokers a concordat between key stakeholders regarding draft proposals to be consulted upon.
- local authority undertakes a statutory consultation with all interested parties, setting out the reasons for the proposals and the supporting evidence.
- local authority decides whether to publish proposals for reorganisation in light of the consultation – if so there is a two month 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.

3.3 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 could lead to the publication of future proposals.

3.4 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 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.

Resources

3.5 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 1: Should 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, be delegated to local authorities?

Question 2: Should local authorities be able to put forward proposals which also involve the creation of Further Education institutions or should this role remain with the Assembly Government?

Question 3: How should the development of proposals affecting more than one local authority area be taken forward? In particular should it be a requirement to establish a joint committee in such circumstances or should this be optional depending on the extent of cross-boundary interest involved and, and the wishes of the local authorities concerned? Should there be guidance from the Assembly Government as to the structure, functions and membership of joint committees?

Question 4: Should the Assembly Government pilot the proposed delegation arrangement in order to make an evidence-based assessment of its practicalities? If so, would one or more of the current pathfinder projects be suitable for such a pilot?

Question 5: Would it be desirable and practical for DELLS regional office staff to be seconded to local authorities to assist in the preparation of proposals?

Section 4 Role of Community Consortia for Education and Training

4.1 The potential delegation of these functions to local authorities could have an impact on 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.

4.2 As prospective sounding boards for the development of sixth form reorganisation proposals, CCETs could continue to play an important role in contributing the employer perspective towards the planning of both 14-19 and post-19 provision, ensuring that employment considerations inform the development of 14-19 Learning Pathways and that there are then opportunities for smooth progression into higher level learning and vocational skills subsequently.

4.3 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. This might be done by seeking views from the reconfigured consortium covering the area in question.

4.4 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. That would not necessarily mean they would be reconfigured to be coterminous with the Spatial Plan areas, although this would be a possibility. The name CCET would need to be changed as they would move from having a community focus to operating with a wider spatial perspective. They might be renamed Sub-regional or Regional Consortia for Education and Training (depending on their geographical coverage) or Learning and Skills Reference Groups to reflect their consultative character. Their membership might, as indicated above, be drawn predominantly from the 'demand side' of the planning of provision i.e. organisations representing employers, and trades unions. They would provide direct links to employers in the geographical areas they covered, to the employer and learner representative bodies at national level (including the Sector Skills Councils), 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 6: Should the CCETs be reconfigured so that their coverage is aligned with the Spatial Plan areas, and reconstituted to act as working groups of the Spatial Plan area programmes; or should they be reconfigured on some other geographical basis?

Question 7: Should their membership be drawn in future predominantly from organisations representing employers? If so, what organisations should be represented?

Question 8: What role could the reconstituted consortia be expected to play both generally in respect of the assessment of education and training needs and priorities and specifically in respect of the development of proposals by local authorities for the reorganisation of 16-19 provision within their geographical areas that the reconstituted consortia would cover?