



National Assembly for **Wales**  
Cynulliad Cenedlaethol **Cymru**

## **The Education Bill (HL 2004/05)**

### **Abstract**

This paper provides background briefing on the Education Bill which has completed its stages in the House of Lords. The Second Reading of the Bill in the House of Commons is scheduled for 14 March 2005.

The Bill contains provisions relating to both England and Wales, as well as Wales-only and England-only provisions. In a number of cases where provisions relate to England and Wales, the Assembly will decide how, when and whether they are implemented in Wales.

**March 2005**





# The Education Bill

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## Executive Summary

This paper provides background briefing on the Education Bill which has completed its stages in the House of Lords. The Second Reading of the Bill in the House of Commons is scheduled for 14 March 2005.

The Bill aims to help schools to raise standards with clearer priorities and fewer bureaucratic burdens through a New Relationship with Schools (NRWS). The Bill takes forward a number of policy developments that were set out in the Department for Education and Skills (DfES) *5-year Strategy for Children and Learners*. A copy of the strategy is available from the DfES website at:

<http://www.dfes.gov.uk/publications/5yearstrategy/>

The changes are focused on promoting greater autonomy and diversity in the education system and on developing the enhanced strategic role for Local Education Authorities.

The vision for education in Wales was set out in "*The Learning Country*", the Welsh Assembly Government's strategic statement on comprehensive education and lifelong learning in Wales to 2010. A link to the Learning Country follows:

<http://www.wales.gov.uk/subieducationtraining/content/learningcountry/tlc-contents-e.htm>

The Bill contains provisions relating to both England and Wales, as well as Wales-only and England-only provisions. In many of the cases where provisions relate to England and Wales, the Assembly will decide how, when and whether they are implemented in Wales.



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## The Education Bill

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

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>

<http://www.publications.parliament.uk/pa/ld200405/ldbills/018/05018.i-vii.html> - as amended in Committee in the House of Lords on 24th January 2005

◆ 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>

## 1 Timetable

### House of Lords

First Reading:	November 30	2004
Second Reading:	December 13	2004

#### Lords Committee stage:

Day 1	January 11	2005
Day 2	January 13	2005
Day 3	January 18	2005
Day 4	January 24	2005

#### Report stage:

	February 21	2005
	February 24	2005

#### Third Reading:

	March 2	2005
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### House of Commons

First Reading	March 4	2005
Second Reading	March 14	2005

On completion of the Bill's progress through the House of Lords, the Bill is passed to the House of Commons to be further debated and amended if necessary. When the text has been agreed between the Houses the Bill is submitted for Royal Assent.

## 2 The Bill – an outline

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.

- ◆ **Part 1** (including Schedules 1 to 9) repeals the School Inspections Act 1996 and re-enacts many of the Act's provisions, with some significant changes, some of which apply in relation to England only and some in relation to Wales only. It reforms school inspections in England in line with the introduction of a new system of more regular, lighter touch inspections, and it gives the National Assembly for Wales the power to introduce similar reforms in the future. It revises the current categorisation for schools causing concern, introducing a new designation of “requiring significant improvement”, and removes the duty on a school to provide a post-inspection action plan. The inspection of early years provision is aligned with school inspections. Wales-only provisions provide for the inspection of the careers services in Wales; for the Assembly to establish an advisory board to advise on any matter relating to the Chief Inspector for Education and Training in Wales; and for the Assembly to provide advice on the appointment of the Chief Inspector for Wales.

*Table 1 on page 3 examines Part 1 on school inspections*

- ◆ **Part 2** (including Schedules 10 to 12) extends the circumstances in which a local education authority must invite proposals for a new or replacement secondary school. **This Part applies to England only.**

*Table 2 on page 4 examines Part 2*

- ◆ **Part 3** (including Schedules 13 to 15) broadens the objectives of the Teacher Training Agency (TTA) so that it may carry out activities in relation to the whole school workforce, not just in relation to teaching. The provisions in this Part also rationalise the functions of the Agency that are currently provided under various pieces of primary and secondary legislation, and ensure that the Agency will have appropriate powers to take on new roles in the provision of training and development for the school workforce.

*Table 2 on page 4 examines Part 3*

- ◆ **Part 4** (including Schedules 16 to 18) contains a number of miscellaneous provisions relating to maintained schools, information sharing, and attendance for excluded pupils at alternative educational provision. In relation to maintained schools, Part 4 provides for schools to adjust their accounting period from financial year to academic year; for the introduction of a guaranteed 3-year budget for schools; for the delegation of powers from the Secretary of State for Education to school forums enabling them to agree proposals from local education authorities in England for variations in central expenditure limits as part of the local setting of school budgets; and allows for similar provisions for Wales to be enacted by order of the National Assembly for Wales should it wish to do so at a later date.

*Table 2 on page 4 examines Part 4*

- ◆ **Part 5** (including Schedule 19) contains general incidental and supplemental provisions including those relating to the functions of the National Assembly for

Wales, subordinate legislation, general interpretation, repeals, commencement and extent.

*Table 2 on page 4 examines Part 5*

### **3 The Bill in detail**

#### **3.1 Provisions relating to School Inspections (Clauses 18 – 45)**

School inspections in Wales are the responsibility of Her Majesty's Chief Inspector of Education and Training in Wales (HMCIW). Following 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.

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.

**Table 1 Provisions relating to School inspection – the effect**

<b>Provision</b>	<b>Effect</b>
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.

### 3.2 Non-inspection provisions

**Table 2 Other provisions – the effect**

Provision	Effect
<p><b>Part 2:</b> <b>School Organisation</b> 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:</b> <b>Training the school workforce</b> 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:</b> <b>Miscellaneous</b></p>	
<p>◆ <b>Funding of Maintained Schools</b> Clause 98 and Schedule 16</p>	<p>In England, 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>◆ <b>Provision to Require LEA's to Set and Submit Targets</b> 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>◆ <b>Annual Parents' Meeting</b> Clause 100</p>	<p>To retain the current position in Wales with power to adopt system proposed for England should it wish.</p>
<p>◆ <b>Governors' Annual Report</b> Clause 100</p>	<p>To retain the current position in Wales with power to adopt system proposed for England should it wish.</p>
<p>◆ <b>School Profiles</b> Clause 101 [England Only]</p>	<p>To introduce a School Profile in respect of England only.</p>
<p>◆ <b>Higher Education Provision in Schools</b> 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>◆ <b>Disposal of Land</b> 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>◆ <b>Data Sharing–Education Maintenance Allowances (EMA)</b> 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>◆ <b>Data Sharing – Eligibility for Free School Lunches or Milk</b> Clause 106</p> <p>Clauses 107 to 110</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>Supplementary provisions relating to information and data sharing and clarification of responsibilities for determining eligibility for free school meals etc.</p>
<p>◆ <b>Supply of Information about School Workforce</b> 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>◆ <b>Attendance at Alternative Educational Provision</b> Clauses 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>◆ <b>Part 5: General</b> 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>

## 4 Wales-only clauses

Of the 124 clauses in the Bill, provisions relate to both England and Wales in 59 clauses with a further 40 Wales-only clauses and 25 England-only clauses.

Of the **40** Wales-only clauses:

- ◆ **26** clauses 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 consultation. The Framework is set within current primary legislation and underpinned by secondary legislation introduced by the National

Assembly. The Bill 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 timetable 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** clauses 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.)
- ◆ **1** (clause 115) is a technical measure to ensure that new functions conferred on the Secretary of State for Education 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 Her Majesty's Inspectors (as with all other Estyn staff) are subjected to National Assembly approval (clause 18 (7));
- ◆ require the Assembly to 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 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).

Table 3 over provides a clause by clause breakdown highlighting the clauses specific to Wales only, England and Wales and the UK..

Table 4 on page 8 provides a more detailed breakdown of the Wales-only clauses.



**Table 3 Breakdown of the Bill by clause and region of relevance**

	Clause Number	England and Wales	England only	Wales only	UK
<b>Part 1:</b> 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			
<b>Part 2:</b> School organisation	63	X			
	64–66		X		
	67–70	X			
<b>Part 3:</b> Training the school workforce	71–77	X			
	78		X		
	79			X	
	80–81	X			
	82–88			X	
	89–97	X			
<b>Part 4:</b> Miscellaneous	98	X			
	99		X		
	100	X			
	101		X		
	102–103	X			
	104–105				X
	106–114	X			
	115			X	
<b>Part 5:</b> General	116–124	X			
<b>Schedules</b>					
	1		X		
	2–4			X	
	5	X			
	6			X	
	7–9	X			
	10–11		X		
	12–19	X			

Table 4 Wales-only clauses – the effect

	Effect	Background
<b>Appointment of HMCI</b> Clause 18(6)	To create a statutory duty that requires the Assembly to provide advice on the appointment, re-appointment or removal of the Chief Inspector.	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</b> Clause 18(7)	Makes the terms and conditions of HMI (as is currently the case with all other Estyn staff) subject to Assembly approval.	This clause provides that it is for the Chief Inspector to determine the terms and conditions of appointment of Her Majesty's Inspectors, subject to the approval of the Assembly. This brings the position of the Assembly in relation to HMI in Wales into line with its position in relation to the Chief Inspector's other staff.
<b>Estyn Advisory Panel</b> Clause 21	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.	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





		<p>particular, by allowing access to the Chief Inspector's staff and papers.</p> <p>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.</p> <p>The powers proposed would be limited to the establishment of the Panel and a requirement for Estyn to co-operate with the Panel.</p>
<p><b>Careers Wales</b>                  Clauses 54 to 56</p>	<p>To extend the remit of the Chief Inspector to include inspection of the services provided by Careers Wales.</p>	<p>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.</p> <p>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.</p> <p>This amendment will draw inspection of the services provided by Careers Wales within the formal remit of the Chief Inspector.</p>

## 5 Henry VIII Powers

Statutory provisions exist which enable the repeal or amendment of primary legislation by way of delegated (or secondary) legislation. Such provisions are known as Henry VIII powers. The House of Lords Select Committee on the Scrutiny of Delegated Powers in its first report<sup>1</sup> defined a Henry VIII clause as:

... a provision in a bill which enables primary legislation to be amended or repealed by subordinate legislation, with or without Parliamentary scrutiny.

The Assembly will take a number of Henry VIII powers in this Bill. Specifically, these powers will allow the Assembly to introduce, at a later date, changes which are being made for England in the Bill. These powers can be found in clauses 61 and 100(3) and in paragraph 5 of Schedule 16.

- ◆ Clause 61 gives the Assembly powers to change the legislative framework for inspection in Wales corresponding to provisions made in England.
- ◆ Clause 100(3) gives the Assembly the power to repeal the annual parents meeting and governors annual report by order at a future date.
- ◆ Paragraph 5 of Schedule 16 gives the Assembly the power to repeal the provisions that currently apply to school funding so that it can move to the 3-year budgeting proposed for England should it decide to in the future.

## 6 Reaction to the Bill

- ◆ Welsh Local Government Association (WLGA) Co-ordinating Committee

The WLGA focussed their reaction on:

- ◆ new three-year ring-fenced budgets
- ◆ shorter, no-notice inspections and the introduction of greater self-evaluation
- ◆ provisions for LEAs to be required to invite proposals from possible providers in all cases where new or replacement schools are required.

“The WLGA broadly supports proposals to give LAs the scope to set 3-year indicative budgets. However, this is dependent on the Welsh Assembly Government providing meaningful figures in their settlements. The 2002-03 Local Government settlement included indicative figures for 2003-04 to 2005-06 which were amended in October 2003. There is also uncertainty surrounding post-16 funding, and even the location of certain responsibilities and functions, given ELWa’s merger and current debates around the Planning Framework and Funding Formula. We feel it would be inappropriate to make assumptions on education budgets at a time of such structural flux.

We have agreed with the Welsh Assembly Government that there will be no formal ring-fencing of education funding. However, there is concern of a gradual return to such a process through the Assembly Government’s increased indication of sum allocation for education through service assessment figures which are published alongside the final local government revenues settlement.

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<sup>1</sup> House of Lords Select Committee on the Scrutiny of Delegated Powers, First report of the Select Committee on the Scrutiny of Delegated Powers, HL 57 1992-93, para 10

Steps to give schools greater autonomy with a new role for LEAs in commissioning services will not apply in Wales.

There is no clear sign that School self-evaluation will apply to Wales. However, it should be stressed that where school self-evaluation, or indeed school evaluation of services, is in place, this must ascertain the views of the school as a corporate body.”

◆ National Association of Head Teachers (NAHT)

NAHT supports many of the provisions in the Education Bill. Detailed comments as follows:

**School inspections**

“NAHT supports the principles behind the new shorter and more regular system. There are matters of important detail that deserve debate (e.g. the fate of a small school in the hands of just one inspector) but our principle concern relates to the lack of any fair appeal system.

We have real concern about the current appeal system arrangements and the fact that these will be exacerbated by the new inspection system.

The fact that the adjudicator has unacceptably limited powers and that we do not have a genuine appeal system is bad enough. Far too frequently, the Report has been published, the damage has been done, and there is nothing that the current appeal arrangement can do to put matters right.

We are now moving to a system where Ofsted is proposing to publish the Report within three weeks. This will make Ofsted impossible for any appeal arrangement, let alone the existing inadequate provision, to prevent injustice where it exists.

It must be made possible for appeal arrangements to be instituted that prevent publication pending an appeal, including an opportunity for a second opinion, otherwise schools will have no recourse to justice where a Report is seriously flawed.

We will return to this issue at Committee stage when we will also want to deal with another important matter.

The introduction of two new elements by which schools will be judged needs further debate:

- ◆ “Meeting the needs of the range of pupils at the school” raises once again questions relating to inclusion, the vital continuing role of special schools and the pressure on mainstream schools caused by the presence of pupils who display very challenging patterns of behaviour. Staffing and funding are key issues.
- ◆ “Contribution to the well being of pupils” as defined by the Children Act 2004, raises important concerns. In particular, great care needs to be taken to ensure that schools are not subject to unreasonable expectations. The terms “contribution to society” and “social/economic well being” are capable of very wide ranging interpretation. Indeed, all the terms set out in section 10(2) of the 2004 Act need to be considered in the light of the role of schools, including extended schooling and education/childcare developments.

**3-year budgets**

The Prime Minister announced this development at or 2004 Annual Conference. It met with immediate approval. Since then a good deal of work has been done to “put flesh on the bones” of this proposal with a consultation due out in the New Year.

We have been party to these discussions and strongly support this move. Heads have long complained about the uncertainty caused by yearly budgeting. A three-yearly cycle allows for better school development planning and far more stable staffing decisions at a time when Workload Agreement and potential salary structure changes demand coherent planning.



Clearly there are more details to be "sorted out" but we are confident that this vital change can be implemented effectively.

We also support the transfer of powers to the School Forums in the area of limits on central expenditure within the Schools Budget, and variation of the minimum funding guarantee. Both should be within the Forums in view of their wide-ranging role over budgets at LEA level.

### **School profile**

The New Relationships with Schools is potentially a real step forward towards a better accountability regime, based upon greater autonomy/independence and less bureaucracy and red tape.

The abolition of both the Annual Parents Meeting (largely a waste of time) and the Annual Report are welcomed. The School Profile is a positive development, which will give parents and others a much more rounded picture of the school in all its aspects."

**Sources:** Department for Education and Skills  
Welsh Assembly Government  
UK Parliament website [www.parliament.uk](http://www.parliament.uk)  
[www.e-politix.com](http://www.e-politix.com)  
Welsh Local Government Association Co-ordinating Committee  
National Association of Head Teachers