

ANNEX 1

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 39 Power to issue a Statutory Code on school organisation	Welsh Ministers	Statutory Code	<p>Setting out requirements in a Code rather than on the face of the Bill or in regulations will enable the use of language more easily understood by interested parties.</p> <p>Provisions will be based on best practice and may be developed over time. A Statutory Code will enable developments in best practice to be more easily incorporated</p>	Statutory Procedure as set out in section 39 of the Act.	It is considered appropriate that provisions included in the code and in accordance with which affected bodies must act, should be laid before the National Assembly. The procedure is set out on the face of the Bill and mirrors that in laying the Codes on School Admissions and School Admission Appeals
Section 57(3) Power to make an order changing the relevant date for the determination of whether a school's number of roll makes it	Welsh Ministers	Order	The relevant date included in the Bill is linked to the annual school census date. Should this change, it is appropriate that the Welsh Ministers have the means to ensure that legislation also changes	Negative resolution	Amendments to the date are an administrative detail and unlikely to be controversial.

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a small school					
Section 88(1) Power for the Welsh Ministers to make Regulations assessing demand for Welsh medium education	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding how a local authority is to assess demand for Welsh medium education and is unlikely to be controversial.
Section 88(2)(a) Power for Welsh Ministers to make Regulations in connection with the form and content of a Welsh in education strategic plan.	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding the form and content of a Welsh in education strategic plan and is unlikely to be controversial.
Section 88(2)(b) Power for Welsh Ministers to make Regulations in connection with the timing and duration of a Welsh in education	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding the timing and duration of a Welsh in education strategic plan and is unlikely to be controversial.

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strategic plan.					
Section 88(2)(c) Power for Welsh Ministers to make Regulations in connection with keeping a Welsh in education strategic plan under review and its revision.	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding the review of a Welsh in education strategic plan and is unlikely to be controversial.
Section 88(2)(d) Power for Welsh Ministers to make Regulations in connection with the consultation during the preparation and revision of a Welsh in education strategic plan under review and its revision.	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding the consultation on a Welsh in education strategic plan and is unlikely to be controversial.
Section 88(2)(e) Power	Welsh	Regulation	The main duties are set out on	Negative	The detail is technical regarding the

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for Welsh Ministers to make Regulations in connection with the submission of a Welsh in education strategic plan for approval.	Ministers		the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	resolution	submission of a Welsh in education strategic plan for approval to the Welsh Ministers and is unlikely to be controversial.
Section 88(2)(f) Power for Welsh Ministers to make Regulations in connection with when and how to publish a Welsh in education strategic plan for approval.	Welsh Ministers	Regulation	The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs.	Negative resolution	The detail is technical regarding the publication of a Welsh in education strategic plan for approval to the Welsh Ministers and is unlikely to be controversial.
Section 88(3) Power for Welsh Ministers to make Regulations in connection with the preparation of a joint Welsh in Education Strategic Plan by two	Welsh Ministers	Regulation	The regulations will make provision for enabling local authorities to prepare and submit a joint plan. This will be undertaken in order to reflect collaborative working between	Negative resolution	The detail is technical regarding the preparation of joint Welsh in education strategic plan and is unlikely to be controversial.

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or more local authorities			<p>local authorities.</p> <p>Any such regulations may also modify provisions in this Part of the Bill which refer to requirements on individual local authorities. However, that power is technical and does not allow the Welsh Minister to create new policy or amend the duties set out on the face of the Bill in response to evidence based needs.</p>		
Section 93(1) (d) Power to make Regulations extending the local authority's duty to make reasonable provision for independent counselling services to other persons	Welsh Ministers	Regulation	School-based counselling is being piloted in primary schools. Regulations will enable the Welsh Ministers to respond to any future evidence based need.	Negative resolution	The main duties are set out on the face of the Bill. It is considered appropriate to give the Welsh Ministers the flexibility and the means to respond swiftly to future evidence based needs in the primary sector. The detail is unlikely to be controversial.

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receiving primary education.					
Section 93(5) Power to make Regulations requiring the local authority to provide independent counselling services at other locations.	Welsh Ministers	Regulation	Regulations will enable the Welsh Ministers to respond to any future evidence based need.	Negative resolution	The main duties are set out on the face of the Bill. It is considered appropriate to give the Welsh Ministers the flexibility and the means to respond swiftly to future evidence based needs. The detail is unlikely to be controversial.
Schedule 1 Paragraph 17(2) Power for the Welsh Ministers to make regulations in connection with the transition from an interim executive board to a normally constituted governing body	Welsh Ministers	Regulation	The grounds for intervening in a school and the power to establish an interim executive board are set out on the face of the Bill. Regulations under this power will simply set out the technical arrangements for when the interim executive board has concluded its business, and a normally constituted governing body is to take over the governance and conduct of the	Negative	The detail is technical regarding the transition to a normally constituted governing body and is unlikely to be controversial..

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			school.		
Schedule 2 paragraph 26 Power to add, delete or amend specified alterations	Welsh Ministers	Order	The types of alterations to schools which require the publication of proposals are liable to change over time as policy develops. An order making power would enable the Act to be amended without the need for new primary legislation.	Affirmative resolution	It is considered appropriate that changes made to primary legislation are approved in plenary
Schedule 5 paragraph 40 Power to make Regulations in connection with the implementation of proposals to change a school's category in respect of the government of a school	Welsh Ministers	Regulation	The issues addressed in any regulations made under this power would be wholly technical in nature and are matters which are currently set out regulations	Negative	The detail is technical regarding the implementation of a change of category and consequential changes to the governing body and is unlikely to be controversial.

ANNEX 2

Power of intervention in Bill	Change to power made by the Bill
Power to direct a school governing body to collaborate using the powers in Part 1 of the Education (Wales) Measure 2011.	This is a new power. This is appropriate as collaboration with a successful school may help turn around a failing school.
Appoint additional governors	Voluntary Aided schools no longer appoint extra governors to preserve a majority of foundation governors This is appropriate as if the school has failed it is important that the new additional governors are simply the best for the job.
Appoint interim executive members	Can apply regulations relating to the constitution or procedure of school governing bodies to governing bodies consisting of interim executive members e.g. staff disciplinary procedures. This is a minor technical change.
Directions to governing body or head teacher when acting unreasonably or failing to exercise an education function at all.	Application of this direction power to head teachers is new. Previously directions could only be made to the governing body or the local authority. Power now applies to all grounds and not just failure to exercise function reasonably or failure to exercise function at all as was the case previously. This recognises the role head teachers have in turning around a failing school.

School Improvement	Change to power made by the Bill
A power to issue statutory guidance.	This is a new power. Currently, the Welsh Ministers do not have the power to issue statutory guidance in relation to effective school improvement practice

School Organisation	Change to power made by the Bill
A power to issue a code on	The Welsh Ministers currently have no power

<p>school organisation with which local authorities and others must comply.</p>	<p>to issue a code on school organisation with which local authorities and others must comply. They may only issue (under section 28(5) of the School Standards and Framework Act 1998) statutory guidance on consultation to which local authorities and others must “have regard”.</p>
<p>A power to determine proposals which receive objections from Category 1 objectors or which relate to Sixth Form education.</p>	<p>Under Schedule 6 to the School Standards and Framework Act 1998, the Welsh Ministers must currently determine all statutory proposals for school reorganisation which result in statutory objections and all proposals for the change of categories of school. They also have a general power to ‘call in’ for determination any other proposal as they think appropriate. Under the provisions of the Bill, Welsh Ministers will determine all proposals for the reorganisation of sixth form education and any other proposals which have resulted in objections from the bodies specified in section 51(1). They have no general power of call in.</p>
<p>Power to exclude transfer of land in the event of a school change of category</p>	<p>Paragraph 34 (1) of Schedule 5 is a restatement of the law currently set out at paragraph 19(3) of Schedule 4 to the Change of Category of Maintained Schools (Wales) Regulations 2001.</p>
<p>Power to make proposals to change Sixth Form education</p>	<p>Currently, under section 113A of the Learning and Skills Act 2000, the Welsh Ministers have the power to make proposals to restructure sixth form education with a view to meeting recommendations made in the report of an area inspection, or with a view to promoting one or more relevant objectives (including those proposals which are designed to promote the relevant objectives when combined with proposals relating to the further education sector). Section 72 of the Bill would provide the Welsh Ministers with the power to make proposals to restructure sixth form education</p>

	which did not relate to specific recommendation or objectives. However in making proposals, the Welsh Ministers would be required to have regard to the Code on School Organisation which would include specific factors relating to the restructuring of sixth form education and which would replicate the relevant objectives above.
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WESPs	Change to power made by the Bill
A power to require local authorities to plan for Welsh education in its area	Ministers currently hold no powers relating to the preparation, submission and implementation of Welsh in Education Strategic Plans.

Miscellaneous Schools Functions

	Change to power made by the Bill
Free Breakfasts in Primary Schools	Currently, the Welsh Ministers do not have the power to issue statutory guidance in relation to the provision of breakfasts for pupils at maintained primary schools. Section 89(5) of the Bill will provide the Welsh Ministers with powers to issue guidance about the provision of breakfasts for pupils which local authorities and schools must have regard
A power to charge for School Meals	The Welsh Ministers do not have any existing powers in connection with the charging of school meals and the Bill does not seek to confer any powers on them.
School-based counselling	The new power in section 93(1)(d) will enable the Welsh Ministers to make regulations to extend the local authority's duty to other persons receiving primary education in response to future evidence

	<p>based needs. The new power in section 93(2(b)) will give the Welsh Ministers the power to issue guidance which local authorities must have regard. The new power in section 93(5) will give the Welsh Ministers the power to make regulations to require local authorities to provide an independent counselling service at other specified location(s). The new power in section 94 will give the Welsh Ministers the power to direct local authorities to provide information relating to their counselling services.</p>
<p>A power to give parents control over timing of meetings with governing bodies.</p>	<p>The current powers in the Education Act 2005 in relation to governing bodies only provide sufficient power to abolish annual parents meetings. They do not allow alternative arrangements to be put in place to ensure that there is still engagement between parents and governors. The Bill will provide power for Welsh Ministers to remove the requirement on governing bodies to hold an annual parents' meeting and to put alternative arrangements in place for parents to meet governors.</p>