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# Power to innovate



## Guidance

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## Power to innovate

<b>Audience</b>	This document is aimed at headteachers, local authorities, foundations, governing bodies of maintained schools (community, foundation, voluntary, community special and maintained nursery schools) and governing bodies of further education institutions in Wales. Learners, parents and carers, school staff, HM Chief Inspector of Education and Training and regional education consortia may also have an interest.
<b>Overview</b>	This document provides guidance on Chapter 1 (Powers to facilitate innovation) of Part 1 of the Education Act 2002 that commenced in relation to Wales on 27 February 2015. This guidance is to inform applicants of the process to be followed and related considerations when applying for the Welsh Ministers to exercise their powers to facilitate the applicant's innovative project.
<b>Action required</b>	None – for information only.
<b>Further information</b>	Enquiries about this document should be directed to: Power to innovate Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: <a href="mailto:Powertoinnovate@wales.gsi.gov.uk">Powertoinnovate@wales.gsi.gov.uk</a>
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/educationandskills">www.wales.gov.uk/educationandskills</a>
<b>Related documents</b>	Chapter 1 (Powers to facilitate innovation) of Part 1 of the Education Act 2002

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## Introduction

Schools, colleges and local authorities with innovative ideas for raising educational standards sometimes find that there are legislative barriers preventing them from making the desired changes to their current practice.

When this happens they can apply to Welsh Ministers to temporarily suspend or modify requirements of education legislation for the purpose of implementing innovative approaches that may (in the opinion of the Welsh Ministers) contribute to raising standards. These powers of the Welsh Ministers are known as the powers to facilitate innovation.

### Status of guidance

This guidance is issued under sections 2(6) and 4(1) and (2)(c) of the Education Act 2002 and section 71 of the Government of Wales Act 2006. A qualifying body<sup>1</sup> applying to the Welsh Ministers to make an order must consult those persons that appear to it to be appropriate to consult, having had regard to this guidance (as well as consulting the persons, if any, which section 4 requires the applicant to consult).<sup>2</sup> This guidance also explains the information which the Welsh Ministers require to be provided in the application form.

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<sup>1</sup> This term is explained in section 5 below.

<sup>2</sup> Section 4(2)(c). Section D in section 5 below deals with consultation.

## The powers to facilitate innovation

The purpose of the Welsh Ministers' powers is to facilitate the implementation of innovative projects, for a fixed period of time, which may contribute to raising standards. To do this, they have the power, by order, to suspend or modify requirements of education legislation relating to the applicant. Specifically, an order may:

- (a) exempt the applicant from an education legislative requirement;
- (b) relax the application of an education legislative requirement in relation to the applicant;
- (c) allow the applicant to exercise a function placed by education legislation on another body, either instead of that other body, or as well as;
- (d) make other modifications of education legislation in relation to the applicant or another body, which are consequential on any of the above provisions.

The powers cannot be used to gain exemption from other types of legislation, for example, health and safety legislation or employment law<sup>3</sup>.

The order allows the trial of an innovative project to take place for up to three years, with a possible one-off extension of up to a further three years. Following this time the applicant must comply with the general education law (as it then applies), although the law might be changed at some point to adopt the modification (or a similar one) more widely and permanently.

Powers to facilitate innovation allow Welsh Ministers to respond to new proposals for raising standards so that no opportunity is lost to trial innovative ideas where they have the potential to stimulate system wide change and raise standards more widely.

There are no preconceptions as to the type of proposals that applicants may put forward. However, if the proposal relates to the provisions of the Education Act 2002 on teachers' pay and conditions (sections 119 – 129), then an order may only be made with the consent of the Secretary of State.

In considering whether a project may contribute to the raising of standards, Welsh Ministers must:

- have regard to the need for the curriculum for any school affected by the project to be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of children and of society; and
- consider the likely effect of the project on all the pupils or students who may be affected by it.

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<sup>3</sup> Education legislation is the Education Acts (defined in section 578 of the Education Act 1996), the Learning and Skills Act 2000 and any subordinate legislation (for example, regulations) made under any of those Acts.

Schools considering making an application should also be aware that, to be successful, applications seeking to reduce contact time between teachers and pupils should contain a strong argument to demonstrate how the benefits, in terms of raising educational standards, would outweigh the loss of teaching time.

Welsh Ministers must refuse an application where it appears to them that it would be likely to have a detrimental effect on the education of children with special educational needs.

## The application process

The power to innovate requires an application from a “qualifying body”. Section 5 of this guidance gives further information on qualifying bodies and completing an application form.

The applicant must send their completed application form to the [Power to innovate mailbox](#) at the Department for Education and Skills.

Consultation is an integral part of the application process: it is important that those affected by a proposal are given an adequate opportunity to express their views. The guidance on Section D of the application form addresses what consultation the applicant should undertake.

The time taken for the Welsh Government to process an application will vary and may depend on whether the proposal has been fully developed or on the number of parties to be consulted. For example, depending on the nature of the proposal Welsh Ministers may consider it appropriate to consult with the Chief Inspector of Education and Training in Wales. The Welsh Government may also need to ask the applicant for more information.

## The approval process

The Welsh Ministers have discretion as to whether to make an order, but they must be of the opinion that a proposal is likely to contribute to raising standards before making an order to temporarily suspend or modify requirements of education legislation. The order must then be placed before the National Assembly for Wales and there will be a minimum of 21 days before it can come into force. This gives Assembly Members the opportunity to inspect or challenge it<sup>4</sup> and notice of the change to those who might be affected.

Applicants will be advised when the Welsh Ministers have made an order but will not be able to commence the innovative activity until the order comes into force – this date is set by the order and will be at least 21 days after it is placed before the National Assembly for Wales.

The Education Act 2002 provides for the Welsh Ministers, with the consent of the applicant, to include in the order provisions different from those requested in the application.

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<sup>4</sup> Any Order made could still be challenged in the National Assembly for Wales after the 21 day period has expired.

# Completing the application form

## Section A: The applicant

You are asked to provide details of the ‘qualifying body<sup>5</sup>’ that is making the application. Those eligible to apply for the suspension or modification of education legislation applicable to them are:

- (a) local authority,
- (b) a qualifying foundation,
- (c) the governing body of a maintained school or federation of maintained schools.,
- (d) the head teacher of a maintained school(s) (with the governing body’s consent),
- (e) the governing body of an institution within the further education sector.

For these purposes ‘maintained school’ means a community, foundation or voluntary school, a community special school, or a maintained nursery school.

A ‘qualifying foundation’ is the foundation (as defined in section 21(3)(a) of the School Standards and Framework Act 1998) of any foundation school that for the purposes of that section has a foundation established otherwise than under that Act.

You are also asked to provide the name and address/es of the establishments to which the proposal relates. If a head teacher is applying, their application can relate only to the school(s) in which they hold their headship post.

In most cases an order can only suspend or modify legislative requirements for an applicant if it is that applicant that the requirement is already placed upon, or would be placed upon by the order (in the case of an order to allow an applicant to exercise another qualifying body’s function). For example, if the requirement is placed on the governing body of a school or FE college, it is the governing body that must apply for a suspension from, or modification of, it; the headteacher or local authority cannot apply on its behalf. However, an order can make modifications of education legislation which are consequential on the suspension or modification and these consequential provisions could apply to another qualifying body. Also, in the case of a qualifying foundation, it may apply in respect of requirements applying to governing bodies of any, or all, of its foundation schools.

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<sup>5</sup> The full list of qualifying bodies is set out in s.1(3) of the Education Act 2002 but not all the bodies listed there are relevant to Wales.

An application may be submitted by more than one qualifying body. For example, the governing bodies of any schools that wish to work together can develop a joint application. Groups of colleges, or schools and colleges, may also make a joint application. Where a joint application is made, the response to each question should clearly indicate which qualifying body the response relates to. Each of the applicants will need to satisfy the criteria and sign the application form.

## **Section B: The proposed innovative project (“the proposal”)**

This section asks the applicant to provide details of the innovative project. It is important that the idea and likely effects can be clearly understood.

An order can only be made for a period of three years or less. On one occasion only, an original order can be extended by up to a further three years. Any decision to extend would be at the discretion of the Welsh Ministers and is subject to the same considerations and limits as an original order. If you are seeking an extension to an existing order please refer to section J of this document.

You are also asked to request a desirable starting date and explain your reasons for that. It must be noted that although a starting date can be requested, any order may provide for a different date. The date is likely to depend upon various factors, such as the time taken for the Welsh Government to process your application (which may be affected by the nature of the application received and whether further information from the applicant is required), the need for an order to be laid before the National Assembly for Wales and whether there should be a further period before it comes into effect, for example, if those affected by it should have longer to change any arrangements in light of it.

When considering what is an appropriate duration for the proposal to take place, you need to consider what is an appropriate period for monitoring its effects, and the appropriate point at which it should be evaluated and allow any necessary time to plan for reverting to the legal position before the end of it or to apply for an extension to the order should that be appropriate.

You should identify the specific piece/s of education legislation, whether primary or secondary (for example, regulations) that are currently preventing your innovative proposal from proceeding, and from which you are seeking suspension or modification. You may wish to discuss with your legal advisers before completing this section of your application.

## **Section C: Raising educational standards in Wales**

When considering applications Welsh Ministers must be satisfied that the proposal may contribute to raising educational standards in Wales, and in particular your proposal must not be likely to have a detrimental effect on the education of children with special educational needs.

Your application must clearly demonstrate how you believe that your proposal is likely to raise educational standards, and include any supporting evidence. You should state whether your proposal is targeted at all learners or specific groups of learners, in which case you must describe the nature of the group and how they will be identified. You should consider and describe in your application the possible impact on educational standards for all pupils or students who may be affected, whether or not they are part of the target group. This will include considering the possibility of unintended consequences.

Proposals should ensure that a balanced and broadly based curriculum continues to be offered to learners. Your application should include details of any effect on the curriculum.

## **Section D: Consultation**

Consultation is an integral part of the application process: it is important that those affected by a proposal are given an adequate opportunity to express their views. Welsh Ministers are unlikely to approve an application if the consultation conducted is not considered to be adequate.

Depending upon the applicant and the nature of the proposal, there are certain bodies and individuals who must be consulted:

- In all cases, if an application is being submitted by a governing body of a maintained school, they must consult their local authority, and if the school is a foundation school with a qualifying foundation, that foundation. Welsh Government consider that they should also have consulted the head teacher.
- If a local authority is applying the Welsh Government consider that it should consult with the schools that may be affected by the proposal and any neighbouring local authorities who may be affected.
- Where a qualifying foundation is applying, it must consult the governing body of each foundation school to which the application relates and the local authority that maintains the school/s.

In addition, the Welsh Government considers that applicants should consult others who may be affected by the proposal, for example staff, trade union representatives, pupils, parents or other persons or bodies, as appropriate. If your proposal is likely to impact upon other schools / colleges, you should provide the names of these along with the name of the local authorities concerned.

You must include details of the consultation process and outcomes in your application. You should include details of the different groups of people consulted (e.g. staff / pupils/ parents etc.), how many people were consulted, how they were consulted, over what period of time and the response rate. Your application should include analysis of the consultation outcome, including a summary of the response from the bodies and individuals who

must be consulted. You should provide information on the nature and extent of any support or opposition to your proposal and in the case of opposition, your response (e.g. "x% were in favour of the proposal, of the x% that expressed concern, the main issue was around timing so we have agreed to implement on a phased approach).

There is no prescribed length or means, but consultation must be comprehensive and meaningful and all those affected by the proposal should be given adequate opportunity to have their views represented. If the Welsh Ministers consider that the information provided or consultation is inadequate in the circumstances, they may require further information from the applicant.

## **Section E: Resourcing**

Your application must include details of any related costs of implementing, monitoring and evaluation of your proposal, and if so, how these will be met. If your project will incur costs then it is important that you have funding available to meet the entire cost, which should include that of managing an exit strategy.

It may be that your proposal would result in resource savings, in which case it is important that this is also identified within your application and you set out how any savings would be re-invested.

## **Section F: Monitoring**

Innovative projects that are facilitated by an order must be closely monitored to assess their impact on educational standards. You must use your own process and measures to monitor and evaluate the effect of the proposal and include details of these, with appropriate timescales, in your application.

You will be expected to identify a baseline against which you propose to measure change during and after the pilot period, and develop your own impact assessment which may include both process and outcomes targets.

## **Section G: Evaluation**

It is important that innovative projects trialled under the power to innovate are evaluated and any lessons learned shared with the wider system. Innovative ideas may not always be successful, but the learning gathered can be used to inform future policy and practice.

The nature and scale of evaluation should reflect the extent of the innovative project and should also include an examination of the process of implementing the change. You should include a broad description of your evaluation strategy.

By applying to trial innovative projects under the power to innovate it must be accepted that any findings are to be shared<sup>6</sup> with Welsh Government for the purposes of assessing the impact of the power to innovate and sharing lessons learned across the wider system.

## **Section H: Exit strategy**

The power to innovate allows applicants to trial innovative approaches for up to three years, with the possibility of a one-off extension of up to a further three years.

The nature of innovation means that not all projects will be successful in raising standards. It is also possible that Welsh Ministers will not seek to adopt every idea more widely through permanent legislative change.

You will be expected to show in your application how you will revert to the general legal position when your trial period comes to an end. You should include all of the key issues that would need to be considered in order to make this transition.

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<sup>6</sup> This would be subject to, and in compliance with, restrictions on sharing data.

## Section I: Contact information and declaration

Please include the details of the appropriate person who can be contacted on a day-to-day basis in relation to your application. The declaration must be signed by an appropriate person – see below table.

<b>Qualifying body applying</b>	<b>Appropriate signatory</b>
The governing body of a maintained school	The Chair of the governing body
The governing body of a federation of maintained schools	The Chair of the governing body
Headteacher of a maintained school(s)	The Headteacher
The governing body of a further education establishment	The Chair of the governing body (or equivalent)
A qualifying foundation	Where the foundation is a company limited by guarantee – a director or a director and the secretary (depending on constitutional arrangements) should sign the application Where the foundation is unincorporated – all individual trustees should sign, unless the foundation has an arrangement whereby one trustee may bind the others. In which case this one trustee will be the appropriate signatory.
A local authority	The Director of Education or equivalent

Please note, in most cases an order can only suspend or modify legislative requirements for an applicant if it is that applicant that the requirement is already placed upon, or would be placed upon by the order (in the case of an order to allow an applicant to exercise another qualifying body's function).

## **Section J: Extending or amending an existing Order**

If you have an existing order made under the power to innovate and you want the order to be amended or extended, you must contact the Welsh Government to discuss the appropriate way forward. A further application is necessary to apply for an amendment or extension.

Circumstances where extension might be considered include:

- a) Where evaluation shows positive results, but there is no immediate vehicle for implementing permanent legislative change; or
- b) Where initial evaluation is positive but more time is required to measure the full impact of the project.

On application from a qualifying body, an order may be amended at any time within its specified duration to extend:

- a) The requirements or functions in relation to which the order applies
- b) The qualifying body to which it applies.

At any time the Welsh Ministers also have the power to make a further order revoking an earlier one, for example, if the change were having a negative impact on educational standards.