

# Memorandum of understanding between the Charity Commission and the Welsh Ministers

in their role as Principal Regulator of  
exempt educational charities in Wales

April 2015



Llywodraeth Cymru  
Welsh Government



**OGL**

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## **Section 1 What this memorandum of understanding is for**

1. This memorandum of understanding (MoU) is supplemental to the Concordat agreed between the Charity Commission for England and Wales (the Commission) and the Welsh Ministers, a copy of which is attached at Appendix A.
2. This MoU sets out how the Commission and the Welsh Ministers propose to work together, both in co-ordinating our regulatory operations and formulating the regulatory policy framework within which we work, in the specific context of the Welsh Ministers role as principal regulator of the following exempt charities<sup>1</sup> in Wales:
  - (a) The governing bodies of foundation, foundation special and voluntary schools and foundation bodies
  - (b) Further Education Corporations
  - (c) The governing body of St David's Catholic College<sup>2</sup>
  - (d) Any other charity that is exempt by virtue of being a connected institution of one of these charities in accordance with paragraph 28 of Schedule 3 to the Charities Act 2011 ("the Charities Act")
3. It is intended to promote effective working and communication between us, and clarity about our respective roles and responsibilities, working procedures, legal powers and constraints.

## **Section 2 Our roles**

### The Commission

4. The Commission is the regulator of charities in England and Wales. It is also responsible for maintaining the Register of Charities which includes deciding if organisations are charitable and should be added to the Register.
5. Parliament has given the Commission five statutory objectives<sup>3</sup>. These are:
  - to increase public trust and confidence in charities
  - to promote awareness and understanding of the operation of the public benefit requirement

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<sup>1</sup> An exempt charity is one that is not regulated by, and cannot register with, the Commission. For further information see the Commission's guidance Exempt Charities (CC23).

<sup>2</sup> Most exempt charities are comprised in Schedule 3 to the Charities Act 2011, but St David's College was incorporated and made exempt by statutory instrument (SI 2005/2293 (W.171)) under section 143(6)(d) of the Learning and Skills Act 2000.

<sup>3</sup> Section 14 Charities Act 2011

- to promote compliance by charity trustees with their legal obligations in exercising control and management of their charities
  - to promote the effective use of charitable resources
  - to enhance the accountability of charities to donors, beneficiaries and the general public
6. The Commission has a wide discretion to decide how to achieve its objectives and carry out its functions.
7. The public have an interest in charities, in particular as beneficiaries, donors, volunteers and taxpayers. The Commission's work seeks to protect the public's interest in charity and ensure that, as the law requires, charities:
- consistently focus on those purposes for the public benefit which give them their charitable status,
  - act independently of any private, governmental or political interests.
8. The Commission aims to:
- assure the public that money intended for charitable purposes is used by charities in accordance with charity law;
  - assure the public that organisations with the status of 'charity' are legitimate, operate independently, and wholly in pursuit of their charitable purposes;
  - ensure the public has as much free access as possible to appropriate information about charities and their activities;
  - ensure that charity trustees carry out their duties and responsibilities as required by law; and
  - promote high standards of governance and accountability by charities.
9. The Commission has a range of powers that it may use to protect charities and their property and/or reputation from abuse and poor practice. The Charities Act 2006 (now consolidated in the Charities Act 2011) extended most of the Commission's powers (summarised at Appendix B) to apply to exempt charities. The Commission must consult the relevant Principal Regulator before exercising any specific power in respect of an exempt charity. It may not exercise its power to institute inquiries unless requested to do so by the Principal Regulator. Legal decisions of the Commission are subject to appeal to the First-tier Tribunal (Charity).

## The Welsh Ministers

10. Regulations made under the Charities Acts 1993 and 2006<sup>4</sup> appoint the Welsh Ministers as the Principal Regulator of the governing bodies of foundation, foundation special and voluntary schools and foundation bodies in Wales.
11. Further regulations made under the Charities Act 2011<sup>5</sup> appoint the Welsh Ministers as the Principal Regulator of Further Education Corporations in Wales and the governing body of Saint David's Catholic College.
12. These regulations also appoint the Welsh Ministers as the Principal Regulator of any exempt charity which is administered by or on behalf of one of these educational institutions and is established for the general purposes of, or for any special purpose of or in connection with, that institution. (In this MoU, a charity for which the Welsh Ministers are Principal Regulator is referred to as a 'relevant charity'.)
13. Principal Regulators have a 'compliance objective', which is to do all they reasonably can to promote compliance by the trustees of the charities for which they are responsible with their legal obligations in exercising control and management of the administration of their charity. If they identify a concern about a charity, they may invite the Commission to use its powers of investigation and intervention under the Charities Act 2011. This does not affect the use by the Principal Regulator of its own regulatory powers.
14. In terms of Further Education Welsh Ministers have established regulatory/monitoring systems to review a college's performance. These include terms and conditions of funding, financial memorandum, financial health monitoring procedures and the audit code of practice. The FE sector will be notified of their exempt charitable responsibilities through a new dedicated DfES web page and guidance as appropriate.
15. In addition to their role as Principal Regulator of exempt charities, the Welsh Ministers may in exercising their statutory powers, take action which impacts on the operation of charities for which they are not Principal Regulator including institutions designated under section 28 of the Further and Higher Education Act 1992.
16. Under section 57 (as amended) of the Further and Higher Education Act 1992 the Welsh Ministers have certain powers of intervention in respect of institutions within the further education sector.

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<sup>4</sup> Regulation 3 of the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011 S.I. 2011/1726.

<sup>5</sup> Regulation 4 of the Charities Act 2011 (Principal Regulators of Exempt Charities) Regulations 2013 S.I. 2013/1764.

## **Section 3 Working together**

### **A. Regulating charities and points of contact**

17. The key principles of an effective charity regulation framework are set out at Appendix D. We consider these to comply with better regulation principles that both of us follow. In particular we both operate a risk-based regulatory regime and adapt the type and degree of our direct regulatory engagement to our assessment of risk.

18. In order to ensure that issues are handled at the appropriate level and that relevant policy developments are taken fully into account, contact between us shall be established through designated points of contact (see Appendix E). Where they consider it appropriate, designated points of contact may:

- delegate ongoing liaison to members of their staff, and
- agree detailed working arrangements or protocols that are relevant to their particular area of responsibility.

### **B. Collecting information and monitoring**

19. We both collect information about the charities that we monitor. The Welsh Ministers will continue to apply their usual processes for monitoring relevant charities, and will work with the relevant charities to ensure effective and proportionate monitoring is maintained.

20. In terms of FE corporations and St David's college Welsh Government will continue to apply its usual process for monitoring further education corporations wherever possible using existing returns of information as listed in paragraph 21.

21. The information that further education corporations are required to provide under the Financial Memorandum, Lifelong Learning Wales Record, Audit Code of Practice and Terms and Conditions of Funding include:

- Information about the vacating and filling of the posts of Principal, Chair of the Corporation and the Clerk.
- The Principal is responsible for advising the Governing Body if at any time in his or her opinion any action or policy being considered by the Governing Body is incompatible with the terms and conditions of this Memorandum. If the Governing Body nevertheless decides to proceed, the Principal will within seven days of such decision inform the Welsh Government in writing of the decision and the reasons he or she believes such decision to be incompatible.
- Data on learners, their programmes, activities and outcomes.

- Annual self-assessment reports, quality development plans and, in certain cases, action plans following Estyn inspections.
- Institutions should submit annually to Welsh Government Provider of Assurance and Governance Services (PAGS) an Audit Committee Annual Report; Clerks Annual Report; Annual Certificate of losses; External Audit Management Letter; and the Internal Audit Annual report. If this information is not received or upon review if there are any concerns over the financial systems and controls, accuracy and regularity of funding claims or evidence to support funding claims institutions may be subject to an Audit review undertaken by PAGS staff.
- Copy of audited financial statements to Welsh Government by 31 December following the end of accounting period.
- Provision of financial information to Welsh Government, specifically the finance record, financial forecasts, mid year return and financial strategy.
- Institutions are required to inform of any fraudulent activity.

### **C. Public information**

22. The Register of Charities includes such information about the charities included on it as the Commission thinks fit. The Commission publishes this information to increase charities' accountability to their supporters, beneficiaries and the public. We will work together to ensure that similar information about the relevant charities is available to the public.
23. Foundation and voluntary schools are under a duty<sup>6</sup> to provide advice and assistance to anyone requesting information (e.g. governance, financial) about the school.
24. The governing body<sup>7</sup> must make available for inspection, to any interested person, a copy of the agenda, signed minutes and reports or papers considered at governor meetings as soon as is reasonably practicable. This transparency also relates to any applicable joint committee meetings (where schools have federated).
25. Foundation and voluntary schools must also, because of their charitable status, ensure the annual accounts are available for viewing by any interested person.<sup>8</sup>
26. Further Education Corporations and St David's College must adhere to the legislative requirements of schedule 4 of the Further and Higher Education Act 1992 (as amended by the Further and Higher Education

<sup>6</sup> Section 16 of The Freedom of Information Act 2000

<sup>7</sup> Regulation 48 of The Government of Maintained Schools (Wales) Regulations 2005

<sup>8</sup> Sections 171 and 172 of the Charities Act 2011

(Governance and Information) (Wales) Act 2014) which require it to make available a copy of the instrument and Articles to be given free of charge to anyone who requests it. Schedule 4 also prohibits changes that would result in the body ceasing to be a charity.

27. Further education corporations shall make their financial statements publicly available and will publish them on its website as part of its publication scheme.
28. For further education corporations in Wales and St David's College the following procedures will apply for reporting, accountability and transparency requirements as exempt charities.

### **Trustees are sufficiently informed about their duties**

- Induction -Governor training is provided by ColegauCymru in liaison with Welsh Government covering finance, governance and trustee responsibilities. It is the responsibility of each clerk to ensure their governing bodies have the correct training.
- Managing conflicts of interest will be included in the training or in guidance issued. Governors currently have to declare any interests in governing body meetings as best practice.
- Receipt of personal benefits will be managed within the finance procedures manual within a college.
- Risks will be managed by a college's risk management procedures and policies already in place.

### **Charity assets are being applied correctly and consistently with the terms of the governing document and charity law**

- Financial position is currently monitored three times per year, financial forecasts, mid year return, annual accounts.

### **Information about the exempt charity is readily available to the public (e.g. via website)**

- Further education corporations and St David's College will be asked to publish required information including accounts and annual reports.

### **D. Sharing information**

29. Sections 54-59 of the Charities Act 2011 permit the Commission and a Principal Regulator to share information about any charity within the Principal Regulator's jurisdiction. It does not, however, impose a duty on either of us to disclose information.

30. We will:

- establish channels of communication for our operational staff to enable them to offer what they believe to be relevant information when they consider it reasonable to do so, and to respond positively and promptly to requests for such information.
  - encourage the disclosure and exchange of information, where appropriate, in order to maximise the efficiency of our respective functions.
  - ensure that information is disclosed in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, and the Data Protection Act 1998.
  - recognise that we both have obligations to disclose information in response to requests made under the Freedom of Information Act 2000. Where either party receives a request for disclosure of information that is relevant to the exercise of the other party's functions under this MOU, the party in receipt of the request will consult the other before making any disclosure of information.
31. Where information is disclosed about an ongoing investigation, neither of us will pre-judge the outcome nor take action before the conclusion of that investigation.
32. Neither the Commission nor the Welsh Ministers will disclose any information received from the other to any other person or body without first obtaining confirmation that the party from whom the information originally came has been consulted about disclosure. When exchanging information the provider will mark it with the appropriate Government Protective Marking Scheme security classification and the recipient will treat the information received accordingly and apply the necessary controls that arise as a result of the marking given.

## **E. Use of statutory powers**

### **Regulatory Powers**

33. We both have intervention powers that we can use if there are serious concerns about the administration of relevant charities. This section relates to the operation of each of our regulatory regimes and how we will enable clear and timely communication. The Commission's powers are outlined in Appendix B to this MoU and the Welsh Ministers main powers of intervention in respect of school governing bodies, Further education corporations and St David's Catholic College are outlined in Appendix C.
34. Where either the Commission or the Welsh Ministers identifies potentially serious concerns about the administration of a relevant charity, it will notify the other in writing as soon as possible, setting out any charity law issues it has identified.

35. A notification from the Welsh Ministers to the Commission may invite the Commission to use any of its regulatory powers or indicate that those powers may be required at some stage during the conduct of the case. In such cases, the Welsh Ministers will supply the Commission with all information that is relevant and appropriate in the circumstances. The Commission is not obliged to accept the invitation and, in such cases, will explain to the Welsh Ministers in writing why it has decided not to use its powers and if it proposes to take any action that does not require their use. The Commission's response will have regard to any relevant published statements about its approach to regulation as well as any published by the Welsh Ministers.
36. The Commission will provide the Welsh Ministers with any comments it wishes to make on charity law issues, in particular it will advise the Welsh Ministers of whether it believes that there may be any aspects of the case that require its intervention.
37. The Commission must consult the Welsh Ministers before using any of its regulatory powers. Unless it has identified a significant and urgent risk to a charity's property and/or reputation, the Commission's method will usually be in writing. The Welsh Ministers will respond to the consultation within a period that may be agreed between the points of contact.
38. If the Commission has identified a clear risk to charity property, beneficiaries and/or reputation the request method and period will be of such type and length as the Commission shall decide, to enable it to take the action it considers to be necessary. Information that may cause such action to be taken may have been acquired through the Commission's own evidence gathering operations. When the action has been taken we will jointly consider what further action is needed and which of us has the relevant expertise to take it.
39. Where we both have a mutual interest in a charity or charitable assets we will aim to agree at the earliest opportunity a case strategy, the role of each of us in the investigation, areas of responsibility and liaison arrangements.
40. The outcome of any such investigation will be made available to both organisations and may be placed on, or linked to, the respective websites in accordance with our respective published policies on disclosing inquiry and regulatory case reports.

#### Support powers

41. All charities can use the Commission's support powers, for example seeking the Commission's advice on charity law issues. In no case will this authorise a relevant charity to act contrary to any obligation contained in any relevant legislation. To ensure that no breach of the Welsh Ministers regulatory function occurs, when using its support powers in relation to a specific relevant charity in ways that could affect

the use of its assets, the Commission will consult the Welsh Ministers in advance, advising them of the action it proposes to take and why.

42. The Commission also publishes general guidance for all charities on its website, and may generally or specifically refer relevant charities to that guidance without first consulting the Welsh Ministers.

#### **F. Policy development and liaison**

43. We are both key stakeholders in the regulation of the relevant charities, and the development of relevant law and policy in our respective areas of expertise. We will work together to develop, interpret and apply relevant law and policy in a way that is consistent with the key principles of charity regulation set out at Appendix D with the aim of minimising the administrative burden on the relevant bodies.

44. In order to ensure that this aim is achieved, we will:

- have meetings as often as we agree may be necessary to identify areas where we need to work jointly;
- provide annual updates to the Commission's Board and Welsh Ministers on the operation of the principal regulator relationship; and
- review the provisions of this MoU every two to four years and where necessary renegotiate its terms.

45. Work that may be developed jointly may include working practices and public and operational guidance.

46. Where we are developing policy that impacts on both of us, the lead individual responsible for that work in each organisation will also be responsible for ensuring at an early stage that they establish with their counterpart their respective responsibilities and how they will deliver the work, identifying the way in which each of us will approve such work (for example, board or executive level) and the timetable for doing so.

47. In order for this to be effective, we will provide each other with information on our respective structures and individual staff responsibilities in relevant areas of our organisations, and update these as they change.

#### **G. Staff development and training**

48. As part of our respective staff development and training programmes, we will ensure that our staff are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, appropriate staff may be offered familiarisation visits to each other's offices.

49. We will also explore the possibility of providing joint training and development initiatives and, where practical, will offer places to each other's staff on relevant internal training courses and seminars.

#### **H. Responding to complaints**

50. This section is about complaints about our performance in relation to matters covered by this MoU, but distinguishes between complaints that should be routed through the Commission's or the Welsh Government's complaints procedure and complaints that are about how we interact.
- Each of us will maintain separate responsibility and accountability for complaints about the services we each provide within our own complaints procedures.
  - Where the correspondence is concerned with complaints, feedback or suggestions concerning how we interact with each other, the recipient will notify the other of information that they receive that is relevant to their responsibilities. We will ensure that there is a prompt exchange and analysis of information and, where appropriate and practical, take a joint approach to resolving the issues raised. We anticipate that this situation will most probably result from a review of individual complaints or a joint review of complaints.

#### **I. General**

51. It is intended that the arrangements in this MoU should apply generally. However, we recognise that some circumstances will require special handling and nothing prevents us from making exceptional arrangements to meet specific and urgent needs in relation to a particular case, charity or group of charities.
52. Any disagreement arising from the interpretation of this memorandum will be referred to both the Chief Executive of the Commission and the Director General of the Department for Education and Skills of the Welsh Government for resolution within the spirit implicit in this memorandum. If necessary, this memorandum will be amended to reflect the agreed outcome of the referral.
53. Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

Signed



Chief Executive of the Charity  
Commission



Director General of the Department  
for Education and Skills, Welsh  
Government

Date: 6 May 2015

### **Concordat with The Welsh Assembly Government (published in February 2002)**

1. This concordat is made between the Welsh Assembly Government ("the Assembly") and the Charity Commission for England and Wales ("the Commission"). References to the Assembly include Assembly Ministers and its officials; likewise references to the Commission include Charity Commissioners and their officials.

2. This concordat has no basis in statute and is not intended to be legally binding. However the Assembly and the Commission agree to abide by the provisions and obligations set out in it wherever practicable.

3. A central Memorandum of Understanding (MOU) sets out common provisions for the working relationship between the UK Government and the three devolved administrations and provides a foundation for this concordat. The principles underlying the MOU are:

- bilateral agreements, known as concordats, will govern relationships between the Assembly and individual Government departments;
- the vast majority of matters which require communication should be capable of being handled routinely by officials or Ministers;
- where a matter is not capable of being handled bilaterally, the matter will be referred to the Joint Ministerial Committee, as described in the MOU.

4. Good working relationships between the Assembly and Government departments are vital to the public interest and the effectiveness of government in Wales. This concordat sets out arrangements for consultation, exchange of information (including the terms on which information is shared), finance, access to services, resolution of disputes and review of relations. The aim of these arrangements is to ensure that the business of government in Wales continues to be conducted smoothly and efficiently. The Assembly and Commission will thus co-operate to the fullest possible extent to achieve this aim; in particular by recognising and taking into account their respective responsibilities and interests.

#### **Consultation arrangements**

5. The Assembly and the Commission undertake to consult each other on the matters mentioned in the Annex, and that the nature and timing of such consultation will be in line with the provisions set out in the MOU.

## **Exchange of information**

6. The MOU sets out the principles for sharing information. The Assembly and the Commission undertake to comply with these principles in order to ensure that each is aware of, and takes account of, the interests of the other. The information to be shared may include policy papers, analysis and statistics and other factual information. The Annex gives some specific examples of information that will be shared.

7. The exchange of information will be subject to the constraints of confidentiality set out in the MOU and any overriding statutory requirements. In particular, access to UK Government protectively marked material will be given to Assembly Ministers and to officials who have the appropriate security clearance. Where relevant, the provisions of the Official Secrets Act will apply.

## **Finance**

8. HM Treasury's Statement of Funding Policy, dated 31 March 1999, sets out the policies and procedures which will underpin the funding arrangements for the Assembly and the other devolved administrations. Where the Commission or the Assembly proposes new policy initiatives and/or changes to existing policy, which may directly or indirectly have financial consequences for the other, it will inform and consult the other in advance. Where additional costs arise from such policy changes, they will be dealt with in accordance with the Statement of Funding.

## **Agency arrangements**

9. The Assembly and the Commission may provide each other with administrative, professional or technical services under agreements made under section 41 of the Government of Wales Act 1998 "the 1998 Act". Each may charge the other for services but it is agreed that this will not be done in respect of services that have been provided free of charge in the past.

## **Matters requiring consultation**

10. Annex 1a lists the contact points for each of the matters mentioned in it.

11. If the Commission proposes to institute proceedings that include a devolution issue (as defined in Schedule 8 of the 1998 Act), it should, wherever possible, (when that issue relates, or is likely to be of concern, to the Assembly's functions), give the Assembly notice of its intention and the grounds for its decision. If the Assembly proposes to institute proceedings that include a devolution issue that is concerned with the statutory functions of a public body relating to charities it should, wherever possible, give the Commission notice of its intention and the grounds for its decision.

## Review

12. Officials of the Assembly and the Commission will hold an annual liaison meeting to review the concordat. The review may be referred to Assembly Ministers /Commissioners if appropriate. Any changes to this concordat will take effect only if they are agreed in writing by the Assembly and the Commission. The liaison meeting will also review relations between the Assembly and Commission, address any particular points at issue and take a forward look at their respective programmes for legislation and executive action.

### Annex 1a – Matters about which there will be consultation, exchange of information e.tc.

<b>Policy on the charitable sector</b>	<b>Welsh Government</b>	<b>Charity Commission</b>
Development and implementation of policy in respect of charitable activity. The Commission will ensure an opportunity is given for appropriate Welsh representation on any groups it leads whose remit impacts on Wales, consulting the Welsh Government when the Commission considers necessary. Similarly, the Welsh Government will ensure an opportunity is given for appropriate Commission representation on any groups it leads whose remit impacts on charities.	Capital Funding Branch (Schools)  Post 16 Policy Branch (FE)	Policy Division
<b>Sharing of statistics</b>		
The Commission will provide the Welsh Government with data already collected about charitable activity in Wales, and on any other topic where the Commission is or becomes responsible for collecting or compiling data covering Wales. The Commission will consult the Welsh Government on the geographical areas it uses for collecting and analysing data about Wales.	Capital Funding Branch (Schools)  Post 16 Policy Branch (FE)	Board Support Team
<b>Miscellaneous issues</b>		
All other Commission responsibilities affecting Wales which are not mentioned above and about which the Welsh Government receives enquiries, representations, etc. information on these issues will often be required for answering correspondence, briefing Assembly Members etc.	Capital Funding Branch (Schools)  Post 16 Policy Branch (FE)	Board Support Team

**The Commission's powers**

The Commission's powers include those listed below. It may only apply most of these powers to a relevant charity after consultation with the Welsh Ministers as principal regulator. It may only exercise its power to institute inquiries if requested to do so by the Principal Regulator. The Commission's support powers are usually only exercised at the request of the charity.

<b>Protective Powers</b>	<b>Statutory reference</b>
Require a charity to change its name in certain specified circumstances	S42-45 CA 2011
Institute inquiries into the administration of a charity	S46 CA 2011 <sup>9</sup>
Call for documents and search records	S52-53 CA 2011
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76, <sup>10</sup> 79, <sup>3</sup> 80(1), CA2011
Make a scheme for the administration of a charity	S79(2)(b) CA 2011 <sup>3</sup>
Appoint new trustees	S76(3)(b) CA 2011 <sup>3</sup> and S80(2) CA 2011
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011 <sup>3</sup>
Order individuals not to part with charity property without its approval ("freezing orders")	S76(3)(d) CA 2011 <sup>3</sup>
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011 <sup>3</sup>
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011 <sup>3</sup>
Appoint an interim manager for a charity	S76(3)(g) CA 2011 <sup>3</sup>
Suspend or remove trustees etc from membership of a charity	S83 CA 2011 <sup>3</sup>
Give specific directions for protection of a charity	S84 CA 2011 <sup>3</sup>
Direct the application of charity property	S85 CA 2011 <sup>3</sup>
Give directions about dormant bank accounts	S107-109 CA 2011
Determine the membership of a charity	S111 CA 2011
Ensure the safekeeping of charity documents	S340 CA 2011
Enter premises and seize documents	S48-49 CA 2011 <sup>3</sup>
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S114 CA 2011

<sup>9</sup> This power may only be exercised on request of the Principal Regulator

<sup>10</sup> Powers only exercisable pursuant to an inquiry under s.46

Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S184(2)-(4) CA 2011
Disqualify trustees who are receiving remuneration by virtue of sections 73A CA 1993	S186 CA 2011

<b>Support powers</b>	<b>Statutory reference</b>
Authorise cy-près application of gifts belonging to unknown or disclaiming donors	S63-66 CA 2011
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S68 CA 2011
Establish a scheme for the administration of a charity (including the alteration of purposes cy-près)	S69 (1)(a) CA 2011 (see also S62 and 67 CA 2011)
Appoint or remove trustees; remove officers or employees	S69 (1)(b) CA 2011
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S69 (1)(c) CA 2011
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S73 CA 2011
Establish common investment funds and common deposit funds	S96-103 CA 2011
Authorise dealings with charity property or other actions in the interests of the charity	S105 CA 2011
Authorise ex-gratia payments	S106 CA 2011
Give advice and guidance to a charity trustee or trustee for a charity	S110 CA 2011 (see also S15(2)-(3) CA 2011)
Authorise regulated amendments to memoranda and articles of charitable companies	S198 CA 2011 (as amended)
Grant a waiver to a person disqualified from acting as a charity trustee	S181 CA 2011
Relieve trustees, auditors etc from liability for breach of trust or duty	S191 CA 2011

## Appendix C

### The Welsh Ministers' Powers

#### i) Governing bodies of foundation and voluntary schools<sup>11</sup>

<b>Intervention powers in relation to governing bodies</b>	<b>Statutory reference</b>
Power to prevent unreasonable exercise of functions	Section 496 of the Education Act 1996 ("the 1996 Act")
General default powers	Section 497 of the 1996 Act
Powers where no properly constituted governing body	Section 498 of the 1996 Act
Power to appoint additional governors	Section 18 of the School Standards and Framework Act 1998 ("the 1998 Act")
Power for Welsh Ministers to provide for governing body to consist of interim executive members	Section 18A of the 1998 Act
Power for Welsh Minister to direct federation of schools	Section 18B of the 1998 Act
Power of Welsh Ministers to direct closure of the school	Section 19 of the 1998 Act

#### ii) Further education corporations and St David's Catholic College

The Welsh Ministers have a wide range of powers (both statutory and non statutory). The powers set out in this appendix are the principal powers of the Welsh Ministers. However, the list of powers is not exhaustive.

If the Welsh Ministers are satisfied to one or more of these matters as listed in sub section (2) of section 57 of the Further and Higher Education Act 1992 (as amended by the Further and Higher Education (Governance and Information) (Wales) Act 2014).

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<sup>11</sup> The School Standards and Organisation (Wales) Bill was agreed by the National Assembly for Wales in January 2013. The Bill reforms the law on school intervention; following the Bill coming into force, the Welsh Ministers' powers of intervention will be contained in Chapter 1 of Part 2 of the Bill. It is anticipated that the Bill will come into force towards the end of 2013.

- that the institution's affairs have been or are being mismanaged by the institution's governing body;
- that the institution's governing body have failed to discharge any duty imposed on them by of the purposes of any Act.
- that the institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act.
- that the institution is performing significantly less well than it might in all the circumstances it can reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

They may do one or more of the following by order:

- Remove all or any of the members of the institution's governing body
- Appoint new members of that body if there are vacancies (how ever arising)
- Give that body such directions as the Welsh Ministers think expedient as to the exercise of their powers and performance of their duties. Including (in extremis) a direction to a corporation requiring it to pass a resolution to dissolve the corporation and transfer its assets and liabilities to a third party.

**Key principles of an effective charity regulation framework**

An effective framework of charity regulation should:

- A be consistent with the Charity Commission's statutory objectives and other principles that the Commission applies to charity regulation;
- B cover all the assets of a charity and ensure that they are only used to further the purposes of the charity (which must be for the public benefit);
- C promote standards of governance that ensure the effective and efficient furtherance of the charity's purposes;
- D ensure that the charity complies with relevant legal and statutory requirements;
- E require the charity to provide to stakeholders adequate financial information about the use and application of its resources.

**Designated Points of Contact**

<b>Area of Liaison</b>	<b>Charity Commission</b>	<b>Welsh Government</b>
Development of Policy	Head of Policy	Post 16 Policy Branch DfES
FE Principal Regulator		Post 16 Policy Branch DfES
Development of Legal Framework	Head of Legal Services	
General approach to Operational Liaison	Head of Wales Office	
Initial contact at Individual Casework Level	Head of Wales Office	
Contact for Supervision/Investigation/Statutory action	Head of Investigations and Enforcement	