**Why Catholic Schools in Wales cannot be Voluntary Controlled**

**Background – The 1944 Settlement**

Church schools were established in England and Wales for many decades prior to the introduction of the current state-maintained education system. Agreement was reached between the Churches and the State to bring the Church voluntary schools within the local authority maintained sector. The statutory framework for this, including Voluntary Aided (VA) and Voluntary Controlled (VC) schools, was established by the 1944 Education Act which forms the basis for current legislation.

This renewed partnership provided for the Churches to allow the use of the land and premises occupied by their schools for the use of the State’s education system without charge (i.e. no rent is paid), enabling the State to meet its obligations to educate the population and to provide a range of schools to parents. In order to achieve this, the law enshrined a number of guarantees from the State to ensure the religious character and ethos of the schools was maintained: particularly in the areas of governance, staffing and admissions.

**The Trust Deed and Trustees**

Church schools are charitable schools, established under one or more charitable trusts. In Catholic schools the Trust Deed and Trustees are normally those of the Diocese, but the precise arrangements may vary, depending on each school’s history. Charitable Trusts have objects, which set out the purposes for which the school exists and must be conducted. In the case of Catholic schools these generally require, amongst other things, the provision of education for Catholic children. The Trustees are responsible for ensuring that the objects and other legal requirements of the Trust are upheld. The Trustees are also accountable to the Charity Commission for ensuring that they act in accordance with their charitable objects and requirements. Trustees are entitled to appoint Foundation Governors who have a specific statutory duty to ensure that these requirements are upheld.

The objects of the charitable trusts that allow Catholic dioceses to provide Catholic schools require the Trustees to comply with canon law. Canon law is the Catholic Church’s legal system, which sets out the rights and responsibilities of its members, the nature of its institutions and how they are to operate. Trustees are not permitted to provide their charitable premises for use by a school which cannot comply with canon law.

**What are the requirements for a school to be Catholic?**

***Governance***

Canon law defines a Catholic school as one which is controlled by the Catholic Church and recognised by the Diocesan Bishop (canon 803). That control is normally established where the diocese owns the school and appoints the governing body, or at least a majority of it.

Voluntary Aided schools can comply with this definition because their Trustees have the power to appoint and remove the majority of the Governing Body and can therefore be Catholic schools. In Voluntary Controlled schools the Trustees only have the right to appoint a small minority of the Governors, so that this requirement cannot be complied with, and the school cannot not fulfil the conditions to be a Catholic school. If a Catholic Voluntary Aided school were to convert to Voluntary Controlled, it would by that fact cease to be a Catholic school as defined in canon law.

***Admissions***

Canon law provides that each Diocesan Bishop has strategic responsibility to commission sufficient places in Catholic schools to meet the needs of baptised Catholic children resident in his area. It gives Catholic children the right to access education in schools provided by the Church.

Voluntary Aided schools can comply with this requirement because the Governing Body is the admission authority for the school and may give preference, when oversubscribed, to Catholic children. In Voluntary Controlled schools the local authority is the admission authority for the school, and the Governing Body does not have the ability to fulfil this requirement.

***Staffing***

Canon law requires all teachers in Catholic schools to be appointed on the basis of their ability to uphold the Catholic ethos of the school, as well as their teaching abilities.

Voluntary Aided schools can comply with this requirement because the Governing Body is the employer of staff, and the law allows it the freedom to take religious factors into account when appointing teachers. In Voluntary Controlled schools the local authority is the employer, and the law prohibits them taking religious factors into account, except in the case of a small minority of ‘reserved posts’. The Governing Body would not therefore be in a position to comply with this requirement.

***Conclusion***

The impossibility of Catholic schools becoming Voluntary Controlled and remaining Catholic schools should be clearly illustrated by the examples given above. It was for this reason that the Bishops of England and Wales decided in 1944 that Voluntary Controlled status was not possible for Catholic schools, and all maintained schools in England and Wales are therefore Voluntary Aided. That analysis was re-affirmed in 1999 with the introduction of Foundation schools, which have similar legal restrictions to Voluntary Controlled schools.

Other churches are subject to different legal requirements and different Trusts, but these have no bearing on whether Catholic schools can be Voluntary Controlled.

Trustees provide charitable land and buildings so that the Governing Body can conduct a Catholic school on their behalf, under the supervision of the Diocesan Bishop in accordance with their charitable objects. The objects of the Trust Deeds require the provision of education in compliance with canon law. If a Catholic school were to change its status from Voluntary Aided to Voluntary Controlled, this would cease to be the case, and the school would no longer be a Catholic school. In these circumstances, its continued occupation of the land and buildings would be in breach of the objects of the Trust Deed, and the Trustees would be compelled to recover their asset in order to employ it in furtherance of their charitable objects.

The Catholic Church invests considerable resources in the provision of Catholic education. It provides support for its schools and colleges, with the majority of funding from parish donations and the local Catholic community, including by the provision of the land and buildings. The Catholic Church has a duty to the Catholic community to ensure that these resources are used for the benefit of the Catholic community. Retaining control over governance, alongside admission criteria, ownership and employment of staff is central to the existence and continuing success of Catholic education.