

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
28 May 2012

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA145 – The Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012

Negative Procedure. Date made 8 May 2012. Date laid 11 May 2012. Coming into force date 1 June 2012

CLA146 – The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) (Amendment) Regulations 2012

Negative Procedure. Date made 9 May 2012. Date laid 11 May 2012. Coming into force date 2 June 2012

CLA148 – The Tobacco Advertising and Promotion (Display) (Wales) Regulations 2012

Negative Procedure. Date made 14 May 2012. Date laid 16 May 2012. Coming into force date in accordance with regulation 1(1)

CLA149 – The Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2012

CLA149 – The Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2012

Negative Procedure. Date made 14 May 2012. Date laid 16 May 2012. Coming into force date 6 April 2015

Affirmative Resolution Instruments

CLA147 – The Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2012

Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force in accordance with regulation 1(1)

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

4. Orders made under the Public Bodies Bill 2011

CLA CM4 – Consent Memorandum for The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012 (Pages 1 – 27)

Papers:

CLA(4)-12-12(p1) – Legislative Consent Memorandum for The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

CLA(4)-12-12(p2) – The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

CLA(4)-12-12(p3) – Explanatory Document to The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

CLA(4)-12-12(p4) – Legal Advisers' Report

5. Statutory Guidance to Risk Management Authorities – Flood and Water Management Act 2010 (CLA150) (Pages 28 – 57)

CLA(4)-12-12(p5) – Statutory Guidance to Risk Management Authorities

CLA(4)-12-12(p6) – Explanatory Memorandum
CLA(4)-12-12(p7) – Legal Advisers’ Note

6. Inquiry into the establishment of a separate Welsh jurisdiction: Elfyn Llwyd MP (Pages 58 – 60)

Paper:

CLA(4)-12-12(p8) – submission to the Inquiry from Rt Hon Elfyn Llwyd MP

Present:

Elfyn Llwyd MP, Group Leader, Plaid Cymru, House of Commons

7. School Standards and Organisation (Wales) Bill

Evidence session with the Minister for Education and Skills Leighton Andrews AM (Pages 61 – 310)

Papers:

CLA(3)-12-12(p9) – School Standards and Organisation (Wales) Bill

CLA(3)-12-12(p10) – Explanatory Memorandum

CLA(3)-12-12(p11) – Legal Advisers’ Report

CLA(3)-12-12(p12) – Letter from the Chair to the Minister for Education and Skills
Leighton Andrews AM

CLA(3)-12-12(p13) – The Minister’s response

CLA(3)-12-12(p13) – Annexes 1 and 2

Present:

- **Leighton Andrews AM**, Minister for Education and Skills, Welsh Government
- **Anthony Jordan**, Head of School Governance and Organisation, Welsh Government
- **Amina Rix**, Lawyer, Welsh Government
- **Simon Morea**, Lawyer, Welsh Government
- **Ceri Planchant**, Lawyer, Welsh Government

8. Paper to note (Pages 311 – 319)

CLA(4)-11-12 – Report of the Meeting 21 May 2012

Date of Next Meeting

11 June 2012

9. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

**A Committee may resolve to exclude the public from a meeting or any part of a
meeting where:**

**(vi) the Committee is deliberating on the conclusions or recommendations of a
report it proposes to publish; or**

(ix) any matter relating to the internal business of the Committee, or of the Assembly, is to be discussed

Consideration of the evidence submitted to Inquiry to date

Consideration of the evidence on the School Standards and Organisation (Wales) Bill

Welsh Government Response to the Constitutional and Legislative Affairs Committee's Inquiry into Powers granted to Welsh Ministers in UK Laws (Pages 320 - 327)

Papers:

CLA(4)-11-12(p4) - The First Minister's response dated 14 May 2012

CLA(4)-11-12(p4) - Annex

CONSENT MEMORANDUM

PUBLIC BODIES ACT 2011: ABOLITION OF HM INSPECTORATE OF COURT ADMINISTRATION AND THE PUBLIC GUARDIAN BOARD

Consent Motion

1. To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012, in accordance with the draft laid in Table Office on 14th May 2012”.

Background

2. This memorandum has been laid by Lesley Griffiths AM, Minister for Health and Social Services, in accordance with the arrangements agreed by Business Committee on 7th February 2012.

3. The above Motion is tabled to seek the agreement of the National Assembly for Wales (the “National Assembly”), in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make an Order for the abolition of HM Inspectorate of Court Administration and the Public Guardian Board. Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly. In relation to the Order only those provisions relating to the Public Guardian Board fall within the competence of the National Assembly.

4. A copy of the Order was laid in Table Office on 14May 2012.

Summary of the Order and its Policy Objectives

5. The Order abolishes the Public Guardian Board (“the Board”) established under the Mental Capacity Act 2005 (“MCA”). The duty of the Board is to scrutinise and review the way in which the Public Guardian discharges his functions and to make appropriate recommendations to the Lord Chancellor. The functions conferred upon the Public Guardian are set out under section 58 of the MCA and include supervisory functions in relation to individuals who lack mental capacity for making decisions.

6. The Board consists of seven members who have been appointed because they have appropriate knowledge or experience in the areas of work covered by the Public Guardian. They have all been appointed for a period of up to four years. The Lord Chancellor is responsible for making appointments directly to the Board, and for its membership. It is to the Lord Chancellor that the Board reports. While the Office of the Public Guardian Agency Board has

a role in the overall management of the organisation, the Board is focused on monitoring and reporting on the work of the Public Guardian.

7. The decision to abolish the Board follows the outcome of the UK Government's 2010 review of public bodies. The intention following abolition of the Board is to replace the functions of the Board by strengthening governance arrangements within the Office of the Public Guardian, which exists as an executive agency of the UK Government.

Competence Issues

The Secretary of State proposes to make the Order pursuant to sections 1, 6 and 35 of the Public Bodies Act 2011. The Order would abolish the Board and make repeals and revocations associated with the abolition.

The National Assembly has legislative competence in relation to "mental capacity" (under Subject 9 (Health and Health Services) of Schedule 7; and Subject 15 (Social Welfare) of Schedule 7 to the Government of Wales Act 2006. It is the view of the Welsh Government that taking these subjects together that it is within the competence of the National Assembly to establish some form of regime which makes provision for the prevention, treatment and alleviation of mental disorder and/or for the protection of vulnerable persons. This competence is considered sufficiently broad enough to establish a board that is tasked with supporting and protecting the rights of individuals who have a mental disorder and to also establish a body which exercises similar functions to the Board in relation to Wales. To the extent that the National Assembly has the competence to create such a body, it would also have the power to abolish it.

It is the view of the Welsh Government, therefore, that the Order in abolishing the Board is legislating for a purpose which falls within the legislative competence of the National Assembly. For this reason, the consent of the National Assembly is sought pursuant to section 9(6) of the Public Bodies Act 2011, in so far as the Order makes provision to abolish the Board in relation to Wales.

This is a composite Order which also includes the abolition of the HM Inspectorate of Court Administration. However, only the Public Guardian Board falls within the legislative competence of the National Assembly for Wales.

Advantages of utilising this Order

It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so that the Board may be abolished at the earliest opportunity. We believe the Board has not met for some time and the Welsh Government has no objection to its abolition. Governance arrangements within the Office of the Public Guardian will be strengthened for the public benefit and in the

interests of ensuring Ministers and others continue to receive assurance over the way in which the Public Guardian discharges his duty.

Financial Implications

As the Board is funded entirely by the UK Government, there are no financial implications for Wales associated with this Order.

Lesley Griffiths AM
Minister for Health and Social Services

Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2012 No.

PUBLIC BODIES

**The Public Bodies (Abolition of Her Majesty’s Inspectorate of Courts Administration and the Public Guardian Board) Order
2012**

Made - - - - ******
Coming into force - - *in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 1, 6(1), (2)(a) and (5) and 35(2) of the Public Bodies Act 2011(a) (“the Act”), having consulted in accordance with section 10 of the Act.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the National Assembly for Wales has been obtained in accordance with section 9(6) of the Act.

A draft of this Order, and an explanatory document containing the information required by section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Bodies (Abolition of Her Majesty’s Inspectorate of Courts Administration and the Public Guardian Board) Order 2012.

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is made.

(a) 2011 c.24

(3) The following provisions come into force on the day after that on which the other provisions of this Order come into force—

- (a) paragraphs 36 and 37 of Schedule 1; and
- (b) paragraphs 3 and 4 of Schedule 2.

(4) Amendments, repeals and revocations in this Order have the same extent as the provisions amended, repealed or revoked.

Abolition of Her Majesty's Inspectorate of Court Administration

2.—(1) Her Majesty's Inspectorate of Court Administration, established under section 58 of the Courts Act 2003(a), is abolished.

(2) The function of inspecting areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody is transferred to Her Majesty's Chief Inspector of Prisons.

(3) The function of inspecting any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts is transferred to Her Majesty's Chief Inspector of Prisons.

(4) Any of Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of Probation for England and Wales and Her Majesty's Inspectors of Constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Courts Administration immediately before its abolition.

(5) Paragraph (4) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(6) Schedule 1 (which makes consequential etc provision) has effect.

Rights of entry and inspection

3.—(1) An inspector exercising functions under article 2(2), (3) or (4) may enter any place of work occupied by persons provided under a contract made by the Lord Chancellor by virtue of section 2(4) of the Courts Act 2003.

(2) An inspector exercising functions under article 2(2), (3) or (4) may inspect and take copies of any records kept by persons provided under such a contract which the inspector considers relevant to the discharge of the inspector's functions.

(3) Paragraph (1) does not entitle an inspector—

- (a) to be present when the Crown Court, a county court or a magistrates' court is hearing proceedings in private; or
- (b) to attend any private deliberations of persons having jurisdiction to hear or determine any proceedings.

(4) The records referred to in paragraph (2) include records kept by means of a computer.

(5) An inspector exercising the power under paragraph (2) to inspect records—

- (a) is entitled to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records in question, and
- (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been used, or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford the inspector such reasonable assistance as the inspector may require.

(a) 2003 c.39. Section 58 has been amended by the Education and Inspections Act 2006 (c.40).

(6) The powers conferred by paragraphs (1), (2) and (5) may be exercised at reasonable times only.

Abolition of the Public Guardian Board

4.—(1) The Public Guardian Board, established under section 59 of the Mental Capacity Act 2005(a), is abolished.

(2) Schedule 2 (which makes consequential etc provision) has effect.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE 1

Article 2(6)

Amendments consequential etc on the abolition of Her Majesty's Inspectorate of Court Administration

Prison Act 1952

1. The Prison Act 1952(b) is amended as follows.

2. In section 5A, after subsection (5B), insert—

“(5C) The Chief Inspector shall also inspect or arrange for the inspection of—

(a) areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody; and

(b) any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts,

and shall report to the Secretary of State on them.”

3. In Schedule A1 (further provision about Her Majesty's Chief Inspector of Prisons)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 6, insert—

“Joint inspection of courts

7.—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(a) 2005 c.9. Section 59 has been amended by the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I.2006/1016).

(b) 1952 c.52. Section 5A was inserted by the Criminal Justice Act 1982 (c.48) and has been amended by the Immigration, Asylum and Nationality Act 2006 (c.33) and the Police and Justice Act 2006 (c.48). Schedule A1 was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007 (c.28), the Health and Social Care Act 2008 (c.14), the Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I.2008/912), and the Health and Social Care Act 2008 (Consequential Amendments No 2) Order 2010 (S.I.2010/813).

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority.”

Police Act 1996

4. The Police Act 1996(a) is amended as follows.

5. In Schedule 4A (further provision about Her Majesty's Inspectors of Constabulary)—

- (a) paragraph 2(2)(d) is repealed;
- (b) paragraph 4(d) is repealed;
- (c) paragraph 5(3)(d) is repealed;
- (d) after paragraph 7, insert—

“Joint inspection of courts

8.—(1) The inspectors of constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the inspectors of constabulary under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority.”

Audit Commission Act 1998

6. The Audit Commission Act 1998(b) is amended as follows.

7. In Part 1 of Schedule 2A (interaction with other authorities)—

- (a) paragraph 1(1)(e) is repealed;
- (b) paragraph 1(2)(c) and the preceding “and” are repealed.

Crown Prosecution Service Inspectorate Act 2000

8. The Crown Prosecution Service Inspectorate Act 2000(c) is amended as follows.

9. In the Schedule (further provision about Her Majesty's Chief Inspector of the Crown Prosecution Service)—

- (a) paragraph 2(2)(d) is repealed;
- (b) paragraph 4(d) is repealed;
- (c) paragraph 5(3)(d) is repealed;
- (d) after paragraph 8, insert—

(a) 1996 c.16. Schedule 4A was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Police Reform and Social Responsibility Act 2011 (c.13) (not yet in force), and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(b) 1998 c.18. Schedule 2A was inserted by the Local Government and Public Involvement in Health Act 2007 and has been amended by the Health and Social Care Act 2008, the Housing and Regeneration Act 2008 (c.17), the Offender Management Act 2007 (Consequential Amendments) Order 2008, and the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (S.I 2010/844).

(c) 2000 c.10. The Schedule was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

“Joint inspection of courts

9.—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates’ courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty’s Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates’ courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority.”

Criminal Justice and Court Services Act 2000

10. The Criminal Justice and Court Services Act 2000(a) is amended as follows.

11. In Schedule 1A (further provision about the inspectorate)—

- (a) paragraph 2(2)(d) is repealed;
- (b) paragraph 4(d) is repealed;
- (c) paragraph 5(3)(d) is repealed;
- (d) after paragraph 6, insert—

“Joint inspection of courts

7.—(1) The inspectorate may inspect any aspect of the Crown Court or magistrates’ courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty’s Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates’ courts.

(3) The power of the inspectorate under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority.”

Courts Act 2003

12. The Courts Act 2003(b) is amended as follows.

13. Part 5 (inspectors of court administration) is repealed.

14. Schedule 3A (further provision about the Inspectors of Court Administration) is repealed.

15. In Schedule 9 (transitional provisions and savings), paragraph 14 is repealed.

Public Audit (Wales) Act 2004

16. The Public Audit (Wales) Act 2004(c) is amended as follows.

17. In section 67A (assistance by Auditor General to inspectorates), subsection (1)(e) and the preceding “and” are repealed.

(a) 2000 c.43. Schedule 1A was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007 and the Health and Social Care Act 2008.

(b) Part 5 comprises sections 58-61A of the Courts Act 2003; sections 58-61 have been amended by the Education and Inspections Act 2006 and section 59 has also been amended by the Transfer of Functions (Children, Young People and Families) Order 2005 (S.I 2005/252). Section 61A and Schedule 3A were inserted by the Police and Justice Act 2006; schedule 3A has also been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Coroners and Justice Act 2009 (c.25) and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(c) 2004 c.23. Section 67A was inserted by the Police and Justice Act 2006 and has been amended by the Offender Management Act 2007 (Consequential Amendments) Order 2008.

Children Act 2004

- 18. The Children Act 2004(a) is amended as follows.
- 19. In section 20 (joint area reviews), subsection (4)(h) is repealed.

Education and Inspections Act 2006

- 20. The Education and Inspections Act 2006(b) is amended as follows.
- 21. Section 156 (removal of HMICA’s duty to inspect performance of Assembly’s functions relating to family proceedings) is repealed.
- 22. In Schedule 13 (interaction with other authorities)—
 - (a) paragraph 1(2)(e) is repealed;
 - (b) paragraph 1(3)(e) is repealed.
- 23. In Schedule 14 (minor and consequential amendments relating to Part 8), paragraphs 77 to 81 are repealed.
- 24. In Schedule 15 (transitional provisions and savings relating to Part 8)—
 - (a) paragraph 4(1)(a) is repealed;
 - (b) in paragraph 9, the entry for “court administration inspector” is repealed.

Police and Justice Act 2006

- 25. The Police and Justice Act 2006(c) is amended as follows.
- 26. Section 32 (Her Majesty’s Inspectorate of Court Administration) is repealed.

Local Government and Public Involvement in Health Act 2007

- 27. The Local Government and Public Involvement in Health Act 2007(d) is amended as follows.
- 28. In Schedule 9, paragraph 1(2)(u) is repealed.
- 29. In Schedule 11 (schedule to be inserted in Audit Commission Act 1998), in the Schedule to be inserted—
 - (a) paragraph 1(1)(e) is repealed;
 - (b) paragraph 1(2)(c) and the preceding “and” are repealed.

Health and Social Care Act 2008

- 30. The Health and Social Care Act 2008(e) is amended as follows.
- 31. In Part 1 of Schedule 4 (interaction with other authorities)—
 - (a) paragraph 1(2)(e) is repealed;

(a) 2004 c.31. Section 20 has been amended by the Education and Inspections Act 2006, the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Offender Management Act 2007 (Consequential Amendments) Order 2008, and the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I 2010/1158).

(b) 2006 c.40. Schedule 13 has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(c) 2006 c.48.

(d) 2007 c.28. Paragraph 1 of Schedule 9 has been amended by the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I 2010/866).

(e) 2008 c.14.

(b) paragraph 1(3)(e) is repealed.

32. In Part 3 of Schedule 5 (further amendments relating to Part 1), paragraph 75 is repealed.

Coroners and Justice Act 2009

33. The Coroners and Justice Act 2009(a) is amended as follows.

34. Section 39 (inspection of coroner system) is repealed.

35. In Part 1 of Schedule 21 (minor and consequential amendments), paragraph 46 is repealed.

Public Bodies Act 2011

36. The Public Bodies Act 2011 is amended as follows.

37. In Schedule 1 (power to abolish: bodies and offices), the entry “Her Majesty’s Inspectorate of Court Administration.” is repealed.

Children Act 2004 (Joint Area Reviews) Regulations 2005

38. The Children Act 2004 (Joint Area Reviews) Regulations 2005(b) are amended as follows.

39. Paragraph 9 of the Schedule is revoked.

Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007

40. The Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007(c) are amended as follows.

41. Regulation 15(g) is revoked.

Her Majesty’s Inspectorate of Court Administration (Specified Organisations) Order 2007

42. The Her Majesty’s Inspectorate of Court Administration (Specified Organisations) Order 2007(d) is revoked.

Offender Management Act 2007 (Consequential Amendments) Order 2008

43. The Offender Management Act 2007 (Consequential Amendments) Order 2008(e) is amended as follows.

44. In Part 2 of Schedule 1 (amendments of Acts)—

(a) paragraph 26(2)(f) is revoked;

(b) paragraph 27(2)(e) is revoked.

(a) 2009 c.25.

(b) S.I 2005/1973. Paragraph 9 of the Schedule has been amended by the Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007 (S.I 2007/603).

(c) S.I 2007/603.

(d) S.I 2007/1176.

(e) S.I 2008/912.

Amendments consequential etc on the abolition of the Public Guardian Board

Mental Capacity Act 2005

1. The Mental Capacity Act 2005 is amended as follows.
2. Section 59 (Public Guardian Board) is repealed.

Public Bodies Act 2011

3. The Public Bodies Act 2011 is amended as follows.
4. In Schedule 1 (power to abolish: bodies and offices), the entry “Public Guardian Board.” is repealed.

Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006

5. The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006(a) is amended as follows.
6. In Schedule 1 (transfer, modification and abolition of functions of the Lord Chancellor – primary legislation), paragraph 36 is revoked.

Public Guardian Board Regulations 2007

7. The Public Guardian Board Regulations 2007(b) are revoked.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes Her Majesty’s Inspectorate of Courts Administration (HMICA) and the Public Guardian Board (PGB). Both bodies are listed in Schedule 1 to the Public Bodies Act 2011.

HMICA was established by section 58 of the Courts Act 2003. The PGB was established by section 59 of the Mental Capacity Act 2005.

All of HMICA’s functions are abolished by this Order except for those specifically preserved and transferred by article 2(2), (3) and (4). The functions of HMICA being abolished include the general power to inspect the Crown Court, county courts and magistrates’ courts, and also the function, which has never been brought into force, of inspecting the operation of the coroner system. Article 2(2) and (3) transfers the power to inspect court custody areas and custody transport respectively in the Crown Court, county courts and magistrates’ courts to Her Majesty’s Chief Inspector of Prisons.

Articles 2(4) and 2(5) allow the specified criminal justice inspectorates to inspect criminal courts if the inspection includes matters other than any aspect of the Crown Court or magistrates’ courts.

All of the PGB’s functions are abolished by this Order.

(a) S.I.2006/1016.

(b) S.I.2007/1770.

The Schedules to this Order make legislative amendments which are consequential etc on the abolition of each body.

An impact assessment has not been prepared for this Order as a whole as its effects are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector, and costs/benefits to the public sector will not exceed £5 million per annum. However, an impact assessment was prepared in connection with the abolition of Her Majesty's Inspectorate of Courts Administration as part of the Ministry of Justice's consultation on the Public Bodies Act 2011; it is available at <http://www.justice.gov.uk/consultations/reform-public-bodies.htm>.

EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (ABOLITION OF THE PUBLIC GUARDIAN BOARD
AND HER MAJESTY’S INSPECTORATE OF COURT ADMINISTRATION)
ORDER 2012
2012 No. xxxx

1. This explanatory document has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.
2. **Purpose of the instrument**
 - 2.1 The purpose of this instrument is to abolish the Public Guardian Board (PGB) and Her Majesty’s Inspectorate of Court Administration (HMICA).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Committee will note article 5 of the instrument, which repeals the entries in Schedule 1 to the Public Bodies Act 2011 (‘the Act’) for HMICA and the PGB. This is permitted by section 6(5) of the Act, and this section is cited as one of the enabling powers in the instrument.
4. **Legislative Context**
 - 4.1 HMICA was set up under section 58 of the Courts Act 2003 and has a statutory duty to inspect and report to the Lord Chancellor on the system that supports the carrying on of the business of the Crown, County and Magistrates’ courts and the services provided for those courts. It also has a statutory duty introduced by the Police and Justice Act 2006 to carry out joint inspection (with the other criminal justice inspectorates) of the criminal justice system. It has a further statutory duty which has never been brought into force, under section 39 of the Coroners and Justice Act 2009, to inspect and report to the Lord Chancellor on the operation of the coroner system.
 - 4.2 The PGB was set up under section 59 of the Mental Capacity Act 2005 to scrutinise and review the way in which the Public Guardian discharges its functions and to make such recommendations about that matter to the Lord Chancellor as it thinks appropriate.
 - 4.3 On 7 December 2009, the then Government announced its intention to abolish HMICA, as part of Putting the Frontline First: Smarter Government reforms. In 2010, the Cabinet Office led a review of all arm’s length bodies across government in order to increase the transparency and accountability of public bodies and to reduce their number and cost. Each body was tested under three criteria: whether it

needs to perform a technical function, act independently to establish facts or be politically impartial. HMICA was tested under these criteria and was not deemed to meet any of these tests, which reaffirmed the decision made by the previous administration. The Lord Chancellor agreed to early administrative closure on 31st December 2010; this had the full agreement of the inspectorate's senior management team.

- 4.4 The PGB was similarly tested and was found not to meet any of these criteria to justify its retention. Both bodies were therefore included in Schedule 1 to the Act, which allows abolition of the listed bodies. This instrument, made under the Act, provides for the abolition of HMICA and the PGB. More detail on these tests is included at section 7 below.
- 4.5 There is no transfer of functions in respect of the PGB.
- 4.6 For HMICA, two functions are transferred to Her Majesty's Chief Inspector of Prisons: firstly, the function of inspecting custody areas of the Crown Court, county courts and magistrates' courts, and secondly the function of inspecting custody transport (any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts). This is in order that the UK may ensure that court custody areas are inspected in accordance with obligations under the United Nations Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- 4.7 The order also enables any of the other criminal justice inspectorates (Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of Probation for England and Wales and Her Majesty's Inspectors of Constabulary) to inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by HMICA, as long as the inspection includes matters other than aspects of those courts. This is to ensure that the Government's commitment to joint inspection of the criminal justice system can be maintained.
- 4.8 The MoJ has decided to group together reforms to HMICA and the PGB. The MoJ took the decision to group bodies, for the sake of efficiency of preparation and scrutiny, into omnibus orders where possible. This was applied in the case of HMICA and PGB. The bodies were both listed in Schedule 1 to the Bill and therefore subject to the same closure proposal; they were of similar priority for the MoJ; and in terms of timing for the proposed abolitions, it was felt that they could be subjected to Parliamentary scrutiny on similar timescales.

5. Territorial Extent and Application

- 5.1 This instrument applies to the United Kingdom. Both HMICA and the PGB are operational only in England and Wales so the practical effect

of this instrument is limited to those territories, but section 59(3) of the Courts Act 2003¹ is repealed by this instrument and that subsection applies to the whole of the UK.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Justice has made the following statement regarding Human Rights:

In my view the provisions of the Public Bodies (Abolition of the Public Guardian Board and Her Majesty's Inspectorate of Court Administration) Order 2012 are compatible with the European Convention on Human Rights.

7. Policy background

- 7.1 The Public Guardian Board was set up to scrutinise and review the way in which the Public Guardian discharges his functions and to make such recommendations to the Lord Chancellor about that matter as it thinks appropriate. The Board consists of seven members who have been appointed because they have appropriate knowledge or experience in the areas of work covered by the Public Guardian.
- 7.2 The Lord Chancellor is responsible for making appointments directly to the Public Guardian Board, and for its membership. It is to the Lord Chancellor that the Board reports; the Lord Chancellor must give due consideration to recommendations made by the Board.
- 7.3 While the Executive Board of the Office of the Public Guardian (OPG) has a role in the overall management of the organisation, the Public Guardian Board is focused on monitoring and reporting on the work of the Public Guardian.
- 7.4 The PGB was included in the 2010 Government review of public bodies, and its role examined against the three tests set out at 4.3. It was deemed that it did not meet the criteria in any of the three tests: particularly, it was considered more effective for the scrutiny and review of the Public Guardian's functions to be achieved not through a separate board, but through the development of governance arrangements which are appropriate to the Office of the Public Guardian's (OPG) status as an executive agency. These arrangements are spelled out below.
- 7.5 The PGB currently has seven members. Of these:

¹ Section 59(3) confers a power on the Lord Chancellor to add any court to the list of courts which may be inspected by HMICA if that court has jurisdiction in the UK, other than one having jurisdiction solely in Scotland or Northern Ireland. In practice this would mean a court which has jurisdiction in either England and Wales or whose jurisdiction is UK-wide. This power has never been used, so HMICA's remit remains the Crown Court, county courts and magistrates' courts (all of whose jurisdiction is solely England and Wales).

- three were reappointed for a second term in February 2012 and will remain in post until the PGB is abolished. MoJ officials have written to the members to lay out these arrangements, and they have agreed.

- three were previously reappointed for a second term, which lasts until February 2013. MoJ officials wrote to the members in February 2012 to propose that they remain in post only until the PGB is abolished. All members have agreed.

- one is a judicial member and not subject to remuneration; the member's appointment will end when the PGB is abolished.

- 7.6 There are no redundancy costs associated with closing this body. Six of the seven members of the Board are paid on a daily rate; the seventh member is judicial and is not remunerated for Board membership. The Board has agreed that its last meeting will take place in June 2012; members will not be remunerated beyond this date except for outstanding travel and subsistence claims.
- 7.7 Section 9(6) of the Public Bodies Act provides that an order to abolish, merge or transfer the functions of a public body requires the consent of the National Assembly for Wales to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly. Section 9(7) of the Act states that an order requires the consent of the Welsh Ministers to make provision not falling within subsection (6) which either modifies the functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or which could be made by any of those persons.
- 7.8 Abolition of the PGB meets the criteria set out under section 9(6) of the Act, as the National Assembly for Wales has competence in relation to medical treatment and health services, social welfare and care of vulnerable persons. Jonathan Djanogly, Parliamentary Under-Secretary of State for Justice, wrote to the Welsh Government in March 2012 to seek agreement to lay a consent motion in the National Assembly for the provisions within this order which come within section 9(6) of the Act. This agreement was given.
- 7.9 Abolition of the PGB does not meet the criteria under section 9(7) of the Act. Abolition of HMICA meets neither the criteria under section 9(6) nor section 9(7) of the Act.
- 7.10 HMICA was set up with a remit to inspect and report to the Lord Chancellor on the system that supports the carrying on of the business of the crown, county and magistrates' courts, and the services provided for those courts.

- 7.11 The landscape in which HMICA operated has changed considerably since its inception in 2005. HM Courts and Tribunals Service (HMCTS) now has robust audit methods and management information processes in place, which negates the need for independent inspection. HMCTS is also subject to external audit by the NAO, which could duplicate the work of HMICA.
- 7.12 It was concluded that whilst it is important to provide assurance that the systems within HMCTS are robust and effective it is not necessary for purely administrative systems to be subject to inspection by an independent body. We need to focus resources on delivering frontline services.
- 7.13 The Government remains committed to joint inspection of the criminal justice system. It is intended that secondary legislation will enable the other Criminal Justice Inspectorates to inspect HMCTS for the purposes of joint inspection. HMCTS continues to support the cross criminal justice system inspection work and the CJS inspectors have committed to consulting HMCTS on its future inspection programme to ensure that the right links can be made.
- 7.14 HMICA closed in December 2010, and all staff have found alternative posts or chose to leave the civil service through voluntary early departure or voluntary redundancy schemes. There is therefore no impact on staff arising from the legal abolition.
- 7.15 The Minister considers that this order serves the purpose in section 8(1) of the Act for the following reasons:

i **Efficiency:** for HMICA, the decision to abolish is consistent with reducing unnecessary bureaucracy and duplication. HMICA's role as set out in legislation was to inspect the administrative processes within the Courts. Oversight will instead be achieved through two means: by transferring certain functions to HM Chief Inspector of Prisons (see paragraph 4.6), and through the robust management and audit processes in place within HMCTS. These include:

- A comprehensive internal audit programme;
- The HMCTS Risk Management Committee, which reviews and considers the corporate risk register and identification of new threats to HMCTS's objectives.
- The HMCTS Audit Committee, whose key responsibility is to support the Accounting Officers in the discharge of their responsibilities for governance, risk management, control and assurance;

- the use of regional risk registers that can be escalated to relevant fora, such as the HMCTS Audit Committee, for action;
- The HMCTS Assurance Programme (HAP) which is a set of processes and tools for operational managers to measure and assess assurance on key processes and controls within their remit;

For the PGB, abolition is consistent with removing duplication of functions. Its role to scrutinise and review the Public Guardian's functions can be more efficiently achieved through oversight within the OPG, the proposed governance arrangements for which are spelled out below.

ii **Effectiveness:** it is more effective to achieve oversight of the administration of the courts using existing audit and risk management processes within HMCTS than through an independent inspectorate. HMICA's abolition also frees resources which can be used to deliver frontline services. When it was functional the inspectorate's full complement of staff was 36 and its yearly budget was in the region of £2 million; these resources can be better deployed elsewhere while the functions of HMICA can be carried out elsewhere

In the case of the PGB, the Government believes that the appropriate scrutiny and review of the Public Guardian's functions is best delivered through developing governance arrangements that are suited to the OPG's status as an executive agency. The PGB has accepted the proposal to abolish, recognising that such an advisory board cannot continue into the future given current financial constraints and the Government's obligation to concentrate expenditure on essential areas. The new OPG governance arrangements will ensure that effective arrangements are in place for the oversight of the Public Guardian's activities. These arrangements are as follows:

- There will be a Management Board, chaired by the OPG Chief Executive, with executive membership from OPG and MoJ as well as three non-executive directors. The Management Board will be charged with overseeing the management and performance of the OPG, including the OPG's transformation programme. It will meet on a monthly basis.
- The presence of the Non-Executive Directors will provide independent scrutiny and challenge of the discharge of the Public Guardian's functions and those of his office. Collectively, the Non-Executive Directors will have relevant experience such as business/performance management, financial management and dealing with those who lack capacity.
- There will also be non-executive director representation on the Public Guardian's two existing stakeholder groups (which meet four times per year each) and there will be continued liaison

between the OPG and the MoJ sponsor team and relevant policy officials, including those leading on the Mental Capacity Act 2005.

iii **Economy:** The abolition of HMICA, which closed administratively at the end of December 2010, is expected to provide cumulative nominal savings of around £6.4m (against MoJ’s SR10 baseline) over the current spending review period. The £6.4m savings are net of all costs.

The abolition of the PGB is expected to provide cumulative nominal savings in the region of £0.4m over the current spending review period.

These savings can be broken down by year as follows:

Body	2011/12	2012/13	2013/14	2014/15	Total
HMICA	£1.5m ²	£1.6m	£1.7m	£1.7m	£6.4m
PGB	£0	£0.1m	£0.1m	£0.1m	£0.4m

The savings of £0.4m for the PGB above are administrative, and are net of any redundancy costs, as there are none associated with closure.

However, implementation of the new governance arrangements for the OPG will incur some costs which will offset these savings. Our best estimate of these costs is no more than **£187,000** over the current spending review period, broken down as follows:

- **£9,000-£10,000** (ex. VAT) maximum one-off cost for an external recruitment exercise of non-executive directors to the OPG board.
- **£72,000:** £24,000 per annum remuneration (multiplied by the 3 remaining years of the current SR period) for 3 non-executive directors at £8,000 each, representing up to 20 days’ time commitment per year each.
- **£105,000 maximum:** no more than £35,000 per annum travel and subsistence (multiplied by the 3 remaining years of the current SR period) for members of the OPG board to travel to meetings. This is a best estimate of maximum costs, taking into account the number of meetings that board members will be expected to attend as per the governance arrangements above.

iv **Securing appropriate accountability to Ministers:** the abolition of HMICA and PGB will not result in any lack of accountability to Ministers since both HMCTS and the OPG are executive agencies within the MoJ and are ultimately accountable to Ministers.

² HMICA’s budget allocation had already been reduced from around £2m at the time of the June 2010 Emergency Budget and savings are therefore calculated against this reduced baseline.

- 7.16. The Minister considers that the conditions in section 8(2) of the Act are satisfied in respect of both the HMICA and the PGB. Abolition of either body does not affect the exercise of any legal rights or freedoms either directly or indirectly. In the case of HMICA, two functions regarding the inspection of custody are being transferred to HM Inspectorate of Prisons. This will be for the purposes of joint inspection only (for example, tracking categories of cases from initial arrest to charge, court appearance, court result and rehabilitation or custody). HMCTS continues to support the cross-criminal justice system inspection work and the CJS inspectors have committed to consulting HMCTS on its future inspection programme to ensure that the right links can be made.
- 7.17 In the case of the PGB, Ministers are aware of the PGB's view that new governance arrangements for the OPG should include a strong non-executive presence as well as expertise across a number of disciplines. This is reflected in the new governance arrangements laid out above.
- 7.18 It was concluded that whilst it is important to provide assurance that the systems within HMCTS are robust and effective, it is not necessary for purely administrative systems to be subject to inspection by an independent body. The Government wishes to focus resources on delivering frontline services. HMICA has no staff and no public appointees; there are no outstanding HR issues regarding this body.
- 7.19 HMICA and PGB were both listed in Schedule 1 to the Bill at its inception. Both bodies were subject to amendments laid in the House of Lords at Committee stage by Lord Bach, Lord Hunt of Kings Heath, Lord Ramsbotham and Baroness Hayter of Kentish Town and debated on 11 January 2011. These amendments aimed to remove the bodies from Schedule 1. The amendment concerning HMICA was withdrawn. The committee did not reach the amendment concerning the PGB but the amendment was not moved further.

8. Consultation outcome

- 8.1 A public consultation covering the bodies the Government proposed to reform through the Public Bodies Bill, including HMICA and the PGB, was launched on 12th July and closed on 11th October 2011.
- 8.2 18 responses were received regarding the proposal to abolish HMICA. Of these, seven respondents stated specifically that they are opposed to the abolition of HMICA, three expressed concerns surrounding aspects of the proposal to abolish, six specifically stated that they are in support of abolition and two did not express a specific view either way.
- 8.3 The general opinion amongst those who supported the abolition was that there was no need for independent inspection of the courts in the

current climate and that HMICA's functions could be adequately carried out elsewhere.

- 8.4 A main theme to the responses from those who did not support abolition was that the abolition of HMICA leaves a key government body without independent scrutiny and results in a loss of expertise. There was also doubt expressed as to whether HMCTS has the appropriate processes in place to challenge its own performance. Concern was also expressed with regard to specific functions of the Inspectorate including its role in joint inspections of the criminal justice process, the inspection of court custody areas and proposed inspection of the coroner's service.
- 8.5 Following consultation, the Lord Chancellor announced on 15th December 2011 his decision to proceed with the abolition of HMICA.
- 8.6 There were a total of 12 responses to the consultation regarding the proposal to abolish the PGB. Ten respondents out of twelve had no objection to the abolition of the PGB providing that robust alternative governance structures for the OPG are put in place. Two respondents were opposed to the abolition due to concern that the PGB's functions will not be adequately carried out by other means.
- 8.7 Following consultation, the Lord Chancellor announced on 15th December 2011 his decision to proceed with the abolition of the Public Guardian Board.
- 8.8 The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Bill can be found on the Ministry Of Justice website at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/consultation-response-public-bodies.pdf

9. Guidance

- 9.1. The nature of this instrument makes it unnecessary to publish guidance in relation to it.
- 9.2 The Minister has written to the Chair of the PGB to inform them of the intention to abolish. No letter was sent in relation to HMICA, which closed administratively at the end of 2010.

10. Impact

- 10.1 An impact assessment (IA) on the abolition of HMICA was prepared in May 2011 as part of the wider consultation on the Public Bodies Bill. It covered the impacts of the formal abolition of HMICA and also included some information on the costs and benefits of the administrative closure of HMICA. The IA concluded that, as HMICA

has already closed administratively, the formal closure has minimal costs associated with it. This IA was updated after consultation to reflect the most recent available information.

- 10.2 An equality impact assessment (EIA) initial screening was carried out for HMICA. As the formal closure of this body follows its administrative closure, there is no equality impact.

The IA and EIA are available online at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/public-bodies-bill-abolition-hmica-ia.pdf.

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/public-bodies-bill-hmica-eia.pdf

- 10.3 An Impact Assessment was not considered necessary for the abolition of the PGB because of the very limited impact its abolition will have in any wider context, and because the financial impact of abolition is so low. The year-on-year breakdown of this financial impact over the current spending review period is spelled out above.

- 10.4 An EIA initial screening was carried out for the Public Guardian Board. This screening showed that, as the small number of PGB members are public appointees and not employees, there is no equality impact. There is one member of staff carrying out secretariat duties for the board, which takes up a small proportion of their time; the member of staff has been redeployed to other duties within the Ministry of Justice. The EIA is currently being updated to reflect the new OPG governance arrangements; the current EIA can be found online at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/public-bodies-bill-pgb-eia.pdf

11. Regulating small businesses

- 11.1 The legislation does not apply to small business.

12. Monitoring and review

- 12.1 Cabinet Office will carry out a post legislative scrutiny review after the passage of the Public Bodies Bill and MoJ will monitor the outcome of that.

13. Contact

- 13.1 Maggie Garrett, Ministry of Justice, tel. 020 3334 6168 or email Maggie.Garrett@justice.gsi.gov.uk can answer any queries regarding the instrument.

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chynghor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cynghor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

Constitutional and Legislative Affairs Committee

LEGISLATIVE CONSENT MEMORANDUM THE PUBLIC BODIES (ABOLITION OF THE PUBLIC GUARDIAN BOARD AND HM INSPECTORATE OF COURT ADMINISTRATION) ORDER 2012

Legal Advice Note

Background

1. The Minister for Health and Social Services has given notice of a motion—
“To propose that the National Assembly for Wales agrees, in accordance with section 9 (6) of the Public Bodies Act 2011 (“the Act”), that the Secretary of State make the Public Bodies (Abolition of HM’s Inspectorate of Courts Administration and the Public Guardian Board) Order 2012 (“the Order”), in accordance with the draft laid in Table Office on 14th May 2012.”
2. This Memorandum was considered in accordance with the arrangements agreed by the Business Committee on the 7th February 2012. The plenary debate for this motion is scheduled for 17 July 2012 subject to the view of the Constitutional Affairs and Legislative Affairs Committee.
3. The Parliament Under-Secretary of State for Justice, wrote to the Welsh Government in March 2012 to seek agreement to lay a consent motion in the National Assembly for the provisions within this Order which come within section 9 (6) of the Act. This agreement was given. The Order was laid under section 11 of the Act on 10 May 2012 before the House of Commons by the Secretary of State Kenneth Clarke. The Instrument has not yet been considered by the Joint Committee on Statutory Instruments. The scrutiny period in the House of Commons expires on 25 June 2012.

The Order:–

4. The Order is made under sections 1, 6 (1), (2) (a) and (5) and 35 (2) of the Act.
5. This is not a Legislative Consent Memorandum within the meaning of Standing Order 30, as it does not relate to provisions contained in a Bill

before the UK Parliament. Nevertheless, it is similar in that it contains provisions amending primary legislation applicable in Wales in relation to a matter within the legislative competence of the National Assembly ie. Mental Capacity. A comparison can be made with the Local Better Regulation Office (Dissolution and Transfer of Functions, etc.) Order 2012, which extended the application of the legislative consent principle to amendments to primary legislation made by Order by UK Ministers.¹

6. The Order abolishes the Public Guardian Board (“the Board”) established under the Mental Capacity Act 2005 (“MCA”). The duty of the Board is to scrutinise and review the way in which the Public Guardian discharges his functions and to make appropriate arrangements to the Lord Chancellor. The functions conferred upon the Public Guardian are set out under section 58 of the MCA and include supervisory functions in relation to individuals who lack mental capacity for making decisions. The decision to abolish the Board follows the outcome of the UK Government’s 2010 review of public bodies. The intention following abolition of the Board is to replace the functions of the Board by strengthening governance arrangements within the Office of the Public Guardian, which exists as an executive agency of the UK Government. There is no transfer of functions in respect of the Board. As well as abolishing the Board, the Order would make repeals and revocations associated with the abolition.

7. This is a Composite Order which also includes the abolition of the HM Inspectorate of Court Administration (“HMICA”). HMICA was set up under section 58 of the Courts Act 2003 and has a statutory duty to inspect and report to the Lord Chancellor on the system that supports the carrying on of the business of the Crown, County and Magistrates’ courts and the services provided for those courts. For HMICA, two functions are transferred to HM Chief Inspector of Prisons. However, HMICA does not fall within the legislative competence of the National Assembly.

The Consent Memorandum

8. The National Assembly has legislative competence in relation to “mental capacity” (under Subject 9 (Health and Health Services) of Schedule 7; and Subject 15 (Social Welfare) of Schedule 7 to the Government of Wales Act 2006. It is within the competence of the National Assembly to establish some sort of regime which makes provision of the prevention, treatment and alleviation of mental disorder and/or for the protection of vulnerable persons. This competence is considered sufficiently broad enough to establish a board that is tasked with supporting and protecting the rights of individuals who have a mental disorder and to also establish a body which exercises similar functions to the Board in relation to Wales. To the extent that the National Assembly has the competence to create such a body, it would also have the power to abolish it.

¹ Minister’s Consent Memorandum for the Local Better Regulation Office (Dissolution and Transfer of Functions, etc.) Order 2012 and guidance contained in Devolution Guidance Note 9.

9. Section 9 (6) of the Act provides that an order to abolish, merge or transfer the functions of a public body requires the consent of the National Assembly to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly. Section 9 (7) of the Act states that an order requires the consent of the Welsh Ministers to make provision not falling within subsection (6) which either modifies the functions of the Welsh Ministers, the First Minister or the Counsel General.

10. The Order, in abolishing the Board, is legislating for a purpose which falls within the legislative competence of the National Assembly, and for this reason the consent of the National Assembly is sought pursuant to section 9(6) of the Act, in so far as the Order makes provision to abolish the Board in relation to Wales. Abolition of the Board meets the criteria set out under section 9(6) of the Act, as the National Assembly has competence in relation to medical treatment and health services, social welfare and care of vulnerable persons. Abolition of the Board does not meet the criteria under section 9(7) of the Act. Abolition of HMICA meets neither the criteria under section 9(6) nor section 9(7) of the Act.

Conclusion

11. The Committee is recommended to consider whether it is content with the current order and also whether any lessons can be learnt from this example following consideration of the Local Better Regulation Office (Dissolution and Transfer of Functions, etc.) Order 2012 in February 2012.

Legal Services

May 2012

Annex

Section 9 (6) and (7) and Schedule 1 of the Public Services Act 2011

Section 9:-

(6)An order under sections 1 to 5 requires the consent of the National Assembly for Wales to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly. .

(7)An order under sections 1 to 5 requires the consent of the Welsh Ministers to make provision not falling within subsection (6) —.

(a)which modifies the functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or .

(b) which could be made by any of those persons.

Section 1, Schedule 1:-

(1)A Minister may by order abolish a body or office specified in Schedule 1.

Power to abolish: bodies and offices:-

Administrative Justice and Tribunals Council.

Advisory Committee on Hazardous Substances (established under section 140(5) of the Environmental Protection Act 1990).

Advisory Committee on Pesticides and Advisory Committee on Pesticides for Northern Ireland (bodies established under section 16(7) of the Food and Environment Protection Act 1985).

Agricultural dwelling-house advisory committees for areas in England.

Agricultural Wages Board for England and Wales.

Agricultural wages committees for areas in England.

Aircraft and Shipbuilding Industries Arbitration Tribunal.

British Shipbuilders and any subsidiary of British Shipbuilders (within the meaning of section 1159 of the Companies Act 2006).

BRB (Residuary) Limited.

Child Maintenance and Enforcement Commission.

Commission for Rural Communities.

Committee on Agricultural Valuation (the body established under section 92 of the Agricultural Holdings Act 1986).

Competition Service.

Courts boards.

Crown Court Rule Committee.

Disability Living Allowance Advisory Board.

Disabled Persons Transport Advisory Committee.

Environment Protection Advisory Committees established under section 12 of the Environment Act 1995 other than the one established pursuant to subsection (6) of that section (Wales).

Food from Britain.

Home Grown Timber Advisory Committee.

Inland Waterways Advisory Council.

Her Majesty's Inspectorate of Court Administration.

Library Advisory Council for England.

Magistrates' Courts Rule Committee (established under section 144 of the Magistrates' Courts Act 1980).

National Consumer Council ("Consumer Focus").

National Endowment for Science, Technology and the Arts.

Plant Varieties and Seeds Tribunal.

Public Guardian Board.

Railway Heritage Committee.

Regional and local fisheries advisory committees established under section 13 of the Environment Act 1995 other than the one established pursuant to subsection (5) of that section (Wales).

Registrar of Public Lending Right.

Sports Grounds Safety Authority.

Valuation Tribunal Service.

Victims' Advisory Panel.

Agenda Item 5

Welsh Government

Statutory Guidance to Risk Management Authorities

Flood and Water Management Act 2010

Section 13(1) - Cooperation and arrangements Section 14 - Power to request information

**Laid before the National Assembly for Wales in accordance with Section
8(6) of the Flood and Water Management Act 2010**

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1. Introduction

Part 1 outlines the purpose of this guidance, who it is aimed at, and explains the wider background and legislative basis

Who is it for?

- 1.1 This guidance will primarily apply to the Risk Management Authorities¹ (RMAs), although other organisations and individuals, including members of the public that may have an interest, particularly if they are asked, or are likely to be asked, for information that they possess in relation to flood and coastal erosion risk management functions.

Purpose

- 1.2 This document provides statutory guidance on the implementation of Sections 13(1) and 14 of the Flood and Water Management Act 2010²(the Act) in Wales.
- 1.3 The purpose of the guidance is to provide advice to enable RMAs to work together constructively to manage flood and coastal erosion risk. It also aims to ensure that when information is requested, it is done in an appropriate way.
- 1.4 Co-operation between RMAs is important because of the mutual benefits they can gain from working together and sharing information. The causes of flooding or coastal erosion can cross organisational boundaries and responsibilities. Innovative, co-ordinated and sustainable solutions will come from a willingness to co-operate and from active partnerships between RMAs, private landowners, businesses, Local Planning Authorities and communities affected.
- 1.5 It should be read in conjunction with the “Non Statutory Information Sharing advice³ issued by the Environment Agency which provides, ‘good practice’ advice on sharing information between RMAs and has been prepared in consultation with key partners. This non statutory guidance will build on the principles contained within this document and includes information such as case studies, model agreements and data standards.

¹ Risk Management Authorities are defined within the Flood and Water Management Act 2010. Welsh Risk Management Authorities include the Environment Agency, Lead Local Flood Authorities, Internal Drainage Boards wholly or mainly in Wales, highways authorities and water companies that exercise functions in relation to areas in Wales (see Annex A for list of RMAs in Wales).

² www.legislation.gov.uk/ukpga/2010/29/contents

³ [link to the EA guidance](#)

- 1.6 The Welsh Government has also published the Flood Risk Management Community Engagement Toolkit⁴ which draws lessons taken from research into the partnership working and community engagement elements of the three Pilot Studies undertaken at Barry, Prestatyn and Pwllheli and a sample of our programme of schemes supported by the European Regional Development Fund⁵(ERDF). The Toolkit aims to assist those responsible for flood risk management schemes or those who may be involved in wider flood risk management activity; and provide guidance on how to approach community engagement and partnership working.
- 1.7 The report presenting the findings of this research⁶ which, together with reports into each of the three Pilot studies⁷, is available on the Welsh Government website. The lessons learned from these reports form the basis of this guidance.
- 1.8 The Toolkit is the initial step in providing guidance to support on community engagement for RMAs.

Background - Partnership Working and Flood Risk Management in Wales

- 1.9 In 2007 the Welsh Government launched the New Approaches Programme⁸, which aimed to facilitate the move away from the traditional defence dominated approach to flooding and coastal erosion, to a more holistic risk management approach. Strong partnership working and communication were identified as key to the successful delivery of a risk management approach to flooding and coastal erosion and these were highlighted within the New Approaches Programme.
- 1.10 To support those principles, the Welsh Government launched three pilot flood alleviation studies at Barry, Prestatyn and Pwllheli. The projects were each exploring new ways of working, including strong partnership working and engaging with the public on flood risk issues. The same principles were applied to the conditions that are attached to the provision of capital funded programme supported by the ERDF under the Convergence and Regional Competitiveness programmes..
- 1.11 The evaluation into the pilot studies and sample of ERDF supported programme reported that partnership working was seen positively.

⁴<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/communities/toolkit/?lang=en>

⁵ The European funded programme will support 28 projects that address flood risk. It aims to reduce flood risk for at least 2,700 people in Wales over six years. The Programme receives funding from the European Regional Development Fund (ERDF) -

<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/convergence/?lang=en>

⁶<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/communities/toolkit/?lang=en>

⁷ Pilot Reports -

<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/studies/pilotstudies/?lang=en>

⁸ The New Approaches Programme has now closed with the principles being taken forward through the National Strategy for Flood and Coastal Erosion Risk Management in Wales. A copy of the closure report is available on the Welsh Government website –

<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/studies/newapproaches/?lang=en>

Overall, the idea of organisations working in partnership in order to manage flood risk was seen both positively and successfully by all members. Although most agreed that there were areas for improvement, working in partnership was perceived as making schemes stronger, as all organisations were working for one common goal.

- 1.12 Shortly after the launch of the New Approaches Programme the UK experienced a period of heavy rainfall resulting in the devastating flooding of summer 2007. Although Wales escaped the worst of the 2007 floods, England was badly affected and the UK Government asked Sir Michael Pitt to undertake a review of the flooding in England.
- 1.13 The Pitt Review highlighted that the agencies responsible for managing flood risk should be willing to work together and share information, and while it was primarily concerned with flood risk in England, the Welsh Government committed to learn the lessons of the Review in recognition of the risks of flooding across Wales.
- 1.14 Drawing on the findings of the Pitt Review, the UK and Welsh Governments consulted on proposals to change the policies and legislation underpinning our response to flooding and coastal erosion risk.
- 1.15 The resulting Flood and Water Management Act 2010 (the Act) identifies new responsibilities for flood and coastal erosion RMAs. Significantly, the Act places a statutory duty on all relevant authorities to co-operate (see paragraph 2.2).
- 1.16 Section 14 of the Act also gives Lead Local Flood Authorities (LLFAs)⁹ and the Environment Agency the power to request information from other parties ('persons' in the Act) in connection with their flood and coastal erosion risk management functions¹⁰. Section 14 also gives the Welsh Ministers the power to request information in relation to their duty to develop, maintain and apply a National Strategy for flood and coastal erosion risk management in Wales.

Legislative basis

- 1.17 Under Section 8 of the Act, the Welsh Ministers have developed a National Strategy for managing flood and coastal erosion risk in Wales. This strategy provides a framework for national flood and coastal erosion risk management. It sets out national objectives to manage all forms of flood and coastal erosion risk and how to achieve them. A copy of the

⁹ In Wales Lead Local Flood Authority is a County or County Borough Council. All Local Authorities in Wales are Lead Local Flood Authorities.

¹⁰ Flood risk management functions are defined in Section 4 of the Flood and Water Management Act 2010 and include certain specified functions under that Act, the Water Resources Act 1991, the Land Drainage Act 1991 and the Highways Act 1980. They also include functions under the Flood Risk Regulations 2009; these were added to the definition of a flood risk management function by the Flood Risk Management Function Order 2010.

Coastal erosion risk management functions are defined in Section 5 of the Flood and Water Management Act 2010 and include certain functions under that Act and the Coast Protection Act 1949.

National Strategy for Flood and Coastal Erosion Risk Management is available on the Welsh Government website¹¹.

- 1.18 Section 8(5) of the Act states that Welsh Ministers may issue guidance about how the National Strategy should be applied. This is something the Welsh Government is currently considering. The Act also states that the Welsh Ministers may in accordance with Section 8(6), issue guidance about how Welsh RMA are to comply with duties relating to co-operation and requests for information under Sections 13(1) and 14.
- 1.19 Section 10 of the Act states that LLFAs have a duty to develop, implement and maintain a Local Flood Risk Management Strategy for their area. Local Strategies must be consistent with the National Strategy. Working together and exchanging information will be essential to develop and implement the National and Local Strategies.
- 1.20 All of the RMAs are required to act in a way that is consistent with the National Strategy and the Local Strategies. The only exception to this is water companies who must act in a way that is consistent with the National Strategy but need only have regard to the Local Strategies.

¹¹<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/nationalstrategy/strategy/?jsessionid=nYwVPPVKFlsqyyrfX6qp62VWh2JsMSyWnXXLfKq9PdkvB9CRyC!!1935070368?lang=en>

2 Co-operation and arrangements: Section 13(1)

Part 2 details which authorities need to co-operate under Section 13 (1), what roles they carry out in managing flood and coastal erosion risk, and the benefits of co-operating and sharing information.

- 2.1 Section 13(1) of the Act states that ‘A relevant authority must cooperate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions’.

Who are relevant authorities?

- 2.2 In Wales, relevant authorities means the Welsh Ministers and the RMAs, which includes:
- (a) the Environment Agency;
 - (b) lead local flood authorities for areas wholly in Wales;
 - (c) internal drainage boards for areas wholly or mainly in Wales;
 - (d) water companies that exercise functions in relation to areas in Wales;
 - (e) highway authorities for areas wholly in Wales.

See **Annex A** for the full list of RMAs in Wales.

What are the flood and coastal erosion risk management functions?

- 2.3 Flood and coastal erosion risk management functions are legally defined in the Flood & Water Management Act 2010 (Sections 4 and 5). Various preceding Acts of Parliament which remain in force or are modified by the Act and the Flood Risk Management Functions Order 2010¹². A non-exhaustive list of typical activities which might be carried out to deliver the functions is at **Annex B**. Therefore the new duty on organisations to co-operate applies to all aspects of flood and coastal erosion risk management in Wales.

The aims of co-operation

- 2.4 The aim of the duty to co-operate between relevant authorities is to make sure that constructive and active engagement takes place. The Welsh Government will make sure they engage constructively with all RMAs, and expect the RMAs to do likewise. Co-operation is essential to help build local relationships between RMAs within and across operational boundaries.
- 2.5 The Environment Agency and LLFAs will often take the lead for flood and coastal erosion risk management. The Welsh Government and LLFAs will develop and maintain National and Local Strategies respectively. It is essential that other flood and coastal erosion RMAs offer their support if these Strategies are to produce effective results.

¹² www.legislation.gov.uk/ukxi/2010/2232/contents/made

- 2.6 Local strategies in particular will often involve managing different types of flooding. Working together, co-operating and understanding objectives will help all RMAs buy-in to the local strategies and the desired results.
- 2.7 Other RMAs, (including water companies and Internal Drainage Boards) can also take a lead role in cases where managing flood or coastal erosion risk is focused on their responsibilities.

Benefits of cooperation

- 2.8 Co-operation involves organisations and individuals working together to achieve more effective results than they could achieve through working alone. This is supported by the findings from the research undertaken into the pilot schemes and sample of schemes supported by ERDF programme in Wales.
- 2.9 Co-operation is built on trust, good communication, sharing information and resources, and an improved understanding of the mutual benefits it can bring.
- 2.10 Co-operation respects the interests of those concerned, while at the same time promoting the wider interests of the group and its stakeholders. Often, clear leadership will be needed to establish the goals to work to, but co-operation is then essential to achieve those goals.

Sharing information and resources

- 2.11 Working in partnership can help improve co-operation between RMAs. Partnerships can also help authorities improve their understanding of wider flood and coastal erosion risk management gaining greater understanding of partner organisation's expertise for example. This will enable them to better co-ordinate delivery in order to achieve multiple benefits. Where one authority may not be able to deliver a solution alone, another authority may be able to help. For example, an upstream authority could carry out work in agreement¹³ with a downstream one.
- 2.12 To manage flooding and coastal erosion risks, it is essential to understand their causes and to assess feasible solutions. It is more likely that the most relevant information will be identified when everyone concerned clearly understands the objectives and potential benefits of a study or project, and willingly contributes information to support it. Discussions over objectives should take place at an early stage of the work.
- 2.13 RMAs should look to the future when planning work. This will enable them to easily share the information they collect, and help them work better together. This in turn will have benefits for the individual organisation, providing them with a greater knowledge base from which to make

¹³ There is no formal agreement for setting up partnerships. These should be established on a case by case basis.

decisions. For example, extending information collection or surveys by a small extent can sometimes offer benefits to other areas of work.

- 2.14 Partnerships are a good way of formalising co-operation and collaboration arrangements between RMAs and others. Documents such as memoranda of understanding and information-sharing protocols can support these arrangements although such protocols should not become over bureaucratic and difficult to administer. Examples of effective partnership working are available in the Environment Agency's non statutory guidance and the Welsh Government's Flood Risk Management Community Engagement Toolkit.

Meeting local needs

- 2.15 Partnerships need to be set up so that they meet local needs in the best way. They can be strategic or project specific. They can build on existing arrangements (such as sustainability forums, local resilience forums, or coastal partnerships), but any widening of the brief must be taken into account. They can cover a range of activities before, during and after a flood, such as sharing information, ways of working, communications, incident response, developing strategy, and designing new works. Partnerships can also be put into practice via Section 13(4) in the Act. This allows one authority to carry out the functions of another, either generally or for a particular project, location or duration.
- 2.16 RMAs should consider the following aspects when setting up partnerships:
- Clearly defined leader and membership roles;
 - governance and accountability for decision making;
 - agreed timetable
 - communication and engagement plans and establish target audience;
 - what information to share, and how to share it;
 - sharing resources, including clearly identifying roles of staff and use of funding;
 - co-ordinating delivery to gain efficiencies;
 - confirming legality of agreements and works established by the partnership;
 - ensuring compliance with other legal requirements covering procurement, habitats etc
- 2.17 The duty to request and share information is contained in Section 13(2). Under the principles of co-operation and partnership, RMAs are expected to readily comply with the duties under Section 13(1) and exchange information that will assist in flood and coastal erosion risk management without making charges. Memoranda of understanding or data sharing agreements can support this.

3 Power to request information: Section 14

Part 3 looks at the authorities that have the power to request information, describes what is covered by the term information, and identifies issues to consider before using the power

Who does Section 14 apply to?

- 3.1 Section 14(2) states the authorities that may request a person to provide information as the Environment Agency and LLFAs. The information requested must be in connection with the Environment Agency /LLFAs flood and coastal erosion risk management function.
- 3.2 The Welsh Ministers may also request a person to provide information related to a function in connection with the National Flood and Coastal Erosion Strategy in Wales.
- 3.3 A person means a legal person. This is any entity that has a legal status and includes a natural person, a company, a trust or a public body, and includes a risk management authority.
- 3.4 At all times, those authorities making requests should act reasonably. Whether a particular request is reasonable would ultimately be a matter for legal decision. However, the authority should remain aware of this principle at all times. What is reasonable depends on the details of the particular case and can differ, even in apparently similar circumstances.
- 3.5 A request made under Section 14 starts a process that the person receiving must comply with. In the event that they do not, the authority (EA, LLFA or Welsh Ministers) should further explain their power to make the information request under Section 14. They should also highlight that the information must be provided both in the form or manner and within the period specified in the request.

Civil Sanctions and Appeals

- 3.6 Section 15 of the Act provides for the authority (EA, LLFA or Welsh Ministers) to issue an enforcement notice against a person should they not comply with a request to provide information. If this notice is not complied with, then civil sanctions may be pursued. The civil sanctions take the form of a penalty notice and possible fines.

In the event that a penalty notice or fine is levied against a person, there is a right of appeal to the First Tier Tribunal¹⁴. This is set out in the Flood and Coastal Erosion Risk Management Information Appeal (Wales) Regulations 2011¹⁵

¹⁴ A panel composed of a tribunal judge and up to two members all appointed by the Lord Chancellor, hear appeals at venues across Wales and England.

¹⁵ www.legislation.gov.uk/wsi/2011/865/made.

What is information?

3.7 Information means data, documents, facts, intelligence or advice in any recorded form, and is intended (for the purposes of this guidance) to have the same meaning as 'document' in the *Reuse of Public Sector Information Regulations 2005*¹⁶. It includes:

- paper files, notes, reports and other hard copy documents (hand written or typed);
- public registers;
- databases, spreadsheets;
- electronic documents;
- e-mails;
- drawings and plans;
- photographs, video or microfilm;
- data and information, which may be included in or with software; methodologies.

How to request information under Section 14

3.8 When the Environment Agency, a LLFA or the Welsh Ministers request information they should follow the principles in paragraph 4.1. When making a request for information the requesting authority should explain:

- the context of the request,
- how the information will be used, and
- (to a level appropriate for the recipient) the overall objectives of the authority's work.

For example, a member of the public may benefit from greater explanation of the reasons for a request than another authority. Guidance for methods to engage appropriately with the public is contained with the Flood Risk Management Community Engagement Toolkit.

3.9 Requests for information under Section 14 cannot be charged for, nor any costs recovered on the part of those asked. The obligation under Section 14 to provide information is unconditional and there are not normally exceptions to this. Authorities must always consider if it is appropriate to request information.

3.10 All flood and risk management authorities are expected to follow the principles set out in Part 4 below when exchanging information, and to work in co-operation with each other as set out in Section 13 of the Act. Welsh Ministers commit to following the principles when making such requests. Other persons (see paragraph 3.1 below) do not have the same duties and will not necessarily have the same priorities as a risk management authority. Extra considerations for these are set out in paragraph 4.2 below.

¹⁶ www.legislation.gov.uk/uksi/2005/1515/contents/made

4 General principles of information requests

Part 4 sets out good principles to follow when information is sought. It applies to sharing information between RMAs as part of Section 13 of the Act, and where requests for information are made under Section 14.

Requests from Risk Management Authorities

4.1 The following principles are set out to help ensure information requests and responses from RMAs are reasonable. Where a request for information is made of a person or organisation that is not a RMA, there are some additional considerations listed in paragraph 4.2 below. Prior contact with those being asked for information is more likely to lead to reasonable requests being made.

Principles	Requesting relevant authority should	Responding relevant authority should
1 – Do you already hold the information?	Ensure that anyone requesting information can confirm that they do not already hold the data within their organisation.	N/A
2 – Written requests and emergencies	<p>Follow up all oral requests for co-operation and information in writing (email is sufficient) so that the request is clear;</p> <p>Identify if the request is being made during a genuine emergency, and that written requests may not always be possible;</p> <p>Follow up with confirmation once emergency has passed</p>	<p>Ask that all oral requests for cooperation are followed up in writing (e-mail is sufficient) so that the request is clear;</p> <p>Accept that during periods of genuine emergency written requests may not always be possible.</p>
3 – Reasons for request and acknowledgement	<p>Explain in non-technical terms why they are asking for the information and how it will be used in the context of their overall flood and coastal erosion risk management functions;</p> <p>Include where relevant, reference to any legislation</p>	<p>Acknowledge request and advise as soon as practicable:</p> <ul style="list-style-type: none"> • on any areas of overlap with other work; • if there are any issues and seek further explanation, if necessary; • what information is likely to be provided;

	<p>that the request is linked to;</p> <p>Indicate that the information will only be used for specified flood and coastal erosion risk management functions;</p> <p>Make sure that the information will only be used for purposes within the remit of flood and coastal erosion risk management.</p>	<ul style="list-style-type: none"> • when a full response will be available; • if they do not hold this information or consider they are not able to provide it for legal reasons; • indicate other possible sources for it, if this is the case.
<p>4 – Specifics and detail of information request</p>	<p>Discuss the specific quantity, quality and format of information needed with the responding authority or person before asking for it to make sure the request is reasonable.</p> <p>Consider and list the specific form and format of information requested, making sure to avoid blanket requests for all data.</p> <p>Decide whether to proceed and confirm request or cancel request.</p> <p>Assess if information received is fit for purpose before using it.</p> <p>Before using information, take account of any licence conditions, limitations etc.</p>	<p>Provide the specific information:</p> <ul style="list-style-type: none"> • as requested, where they are able after checking that they have not already provided the information; • in the format requested where it is held in that format or where it can be converted without unreasonable amounts of work • explain early on if there are any issues about providing the information, such as where it is in draft and subject to modification, or format changes are not practicable; • explain whether there are any issues around third party rights or confidentiality that may affect providing the information; • explain how long the information will remain valid for and frequency of any updates; • explain any limitations on using the data, such as

		intellectual property, Data Protection Act, and fitness for purpose.
5 Highlight specific advice	Highlight where specific advice might be requested on a topic, or regarding the use of data requested. When requesting advice, ensure this is focussed on the key areas of interest.	Provide the advice and explain early on if there are any issues, after checking that they have not already provided the advice elsewhere.
6 Timescales	<p>Request information within reasonable timescales, which will depend on the nature and circumstances of the request, and of the authority or person responding;</p> <p>List and explain basis of the timescales;</p> <p>Reasonable should be taken to mean the same as under Environmental Information Regulations (Section 5(2)). This usually allows a maximum of 20 working days to provide the response;</p> <p>During periods of genuine emergency, seek cooperation as soon as possible to meet needs.</p>	<p>Co-operate within reasonable timescales, which will depend on the nature and circumstances of the request;</p> <p>During periods of genuine emergency, the authority should cooperate as soon as possible to meet needs;</p> <p>Explain early on if there are any issues in meeting them.</p>
7 – Next Steps	Explain what will happen next and where and when further co-operation is likely to be requested.	Raise any issues about future plans to use the information and highlight opportunities for possible cooperation in future working.
8 – Further information and clarity of request	Provide further details, if requested.	Ask for further details to understand the request as early as possible.
9 – Meet in person to discuss request	Meet and discuss (virtually or in person) to explain further, if asked to do so, within a reasonable timescale.	Be prepared to meet and discuss (virtually or in person), if requested, within a reasonable timescale.

Requests from persons who are not RMAs

4.2 The following extra considerations apply when requesting information from persons or organisations who are not RMAs:

Principle 2 (Written Requests) - a request should:

- a) be made via a letter or from an official email account within the authority, to confirm its legitimacy;
- b) clarify that the authority is able to ask for the information under the Act, and that it relates to its flood and coastal erosion risk management functions;
- c) make clear that the request is being made under Section 14, using such wording as 'This authority is / I am requesting information under Section 14 of the Flood & Water Management Act 2010';
- d) include supporting information to act as background to (b) and (c) by referring to the Act, this guidance, or pre-prepared explanations.

Principle 2 (Written Requests) - timescales for requests made in an emergency need to acknowledge that the person it is made to may not have an emergency role, or conversely may be dealing with an emergency themselves.

Principle 6 (Timescales) - reasonable timescales will depend on the amount and type of information being requested. Timescales should note that information may not be kept in the form requested. They also need to take account of the business or other needs of the person to whom the request is made.

5 Legal considerations when requesting information or responding to information requests

Part 5: This part highlights some of the other general legal provisions about requesting and providing information.

- 5.1 Requests for information or responses are subject to the general principles of information law. Everyone involved must adhere to this. Depending on the circumstances, specific legal advice should be sought. This guidance is not a definitive statement of information law, but you should consider the following when seeking information from others.
- 5.2 Any information provided under Section 13(1) or 14 should only be used for flood and coastal erosion management risk functions. Should there be a wish, or need, to use the information for other purposes the person providing the information should normally be consulted, unless the person providing the information explicitly permits (in writing) it to be used for other activities.
- 5.3 Information requested under Section 13 (1) or 14 which is identified as personal data, as prescribed by the Data Protection Act 1998 (DPA), may legitimately withheld, if sharing that information would breach the DPA. In such a case however, information may be amended by de-personalising it so that it can be provided without infringing the DPA. It is not justification for a blanket refusal to provide anything when requested.
- 5.4 The responding authority or person should indicate what restrictions or sensitivities are in the information when it is provided. This includes metadata (information about the nature of a data set) associated with detailed data which must include the currency of the information and frequency of any updates. They should let the person receiving the information know about any data quality problems, its fitness for purpose and other related issues; for example, if data is only valid for a certain period of time and if it is subject to being updated in the future. The authority asking for the information should not presume that if this supporting information is not provided, then there are no limits on using it. These issues should be discussed and confirmed between the two parties.
- 5.5 The authority or person providing the information may need to be reassured that it will not be used or released inappropriately, particularly if it is sensitive. They may provide the information under a licence containing terms and conditions of use. For example, including a condition that allows the data owner an opportunity to comment on information before it is published.

- 5.6 Under the Environmental Information Regulations (EIR)¹⁷, a public authority receiving the information may be asked to disclose any information provided to them. Similar to Freedom of Information legislation some information (such as commercially sensitive data) may be exempted from release under the EIR. However, there may be situations where there is still an obligation to disclose it. Where a public authority receives a request for any information shared under Section 13 or 14, that public authority should, normally, consult with the party who provided the information prior to the public authority deciding whether the information should be released or not.
- 5.7 If the information contains or has used third-party intellectual property, the responding authority or person should check whether they have the rights to provide it. If this is not clear, the recipient should check with the respondent whether they have the rights to use it.
- 5.8 If the information requests relate to flood risk management functions that are also subject to the Civil Contingencies Act 2004 then all involved should be mindful of the requirements of that Act. Under the CCA 2004 and the Contingency Planning Regulations 2005, Category 1 and 2 responders have a duty to share information with other Category 1 and 2 responders. This is required for those responders to fulfil their duties under the CCA. Information sharing is also encouraged as being good practice. The initial presumption is that all information should be shared, however the release of some information, and of information to some audiences, may need to be controlled.
- 5.9 Not all information can be shared, and Category 1 and 2 responders can claim exceptions in certain circumstances (and thus not supply information as requested). Exceptions under this Act and the Regulations relate to sensitive information only. Where the exceptions apply, a Category 1 or 2 responder must not disclose the information. A Category 1 or 2 responder must refuse to comply with an information request if the information is sensitive and if it has reasonable grounds to believe that complying with the request would compromise that information. If a Category 1 or 2 responder refuses to disclose information on this basis, it must give reasons for so doing, unless the information is sensitive by virtue of its impact on national security. It should be noted, however, that this exception is only rarely likely to be available, as generally there will be no robust reason to expect that information would be passed on.
- 5.10 There are four different kinds of sensitive information as defined by the Regulations:
- information prejudicial to national security
 - information prejudicial to public safety
 - commercially sensitive information
 - personal data

¹⁷ www.legislation.gov.uk/ukksi/2004/3391/contents/made

Annex A - Risk Management Authorities in Wales

Environment Agency Wales

The Agency is a Welsh Government Sponsored Public Body, whose principal aims are to protect and improve the environment, and to promote sustainable development.

Head Office Tŷ Cambria House 29 Newport Road Cardiff CF24 0TP	South West Area Office Maes Newydd Llandarcy Neath Port Talbot SA10 6JQ
South East Area Office Rivers House St Mellons Business Park Fortran Road St Mellons Cardiff CF3 0EY	Northern Area Office Ffordd Penlan Parc Menai Bangor Gwynedd LL57 4DE
Phone Number: 08708 506506 Email: enquiries@environment-agency.gov.uk Website: www.environment-agency.gov.uk	
Floodline Phone Number: 0845 988 1188 (24 hour service) Type Talk: 0845 602 6340	

Lead Local Flood Authorities in Wales

A Lead Local Flood Authority (LLFA), in relation to an area in Wales is either:

- a) the county council for the area; or
- b) the county borough council for the area.

There are 22 county or county borough councils in Wales (listed below)

<p>Blaenau Gwent County Borough Council</p> <p>Civic Centre Ebbw Vale Blaenau Gwent NP23 6XB</p> <p>Phone Number: 01495 311556 Minicom: 01495 355959 Email address: info@blaenau-gwent.gov.uk Website: www.blaenau-gwent.gov.uk</p>	<p>Bridgend County Borough Council</p> <p>Civic Offices Angel Street Bridgend CF31 4WB</p> <p>Phone number: 01656 643643 Fax: 01656 668126 Email address: talktous@bridgend.gov.uk Website: www.bridgend.gov.uk</p>
<p>Caerphilly County Borough Council</p> <p>Tŷ Penallta House Tredomen Park Ystrad Mynach Hengoed CF82 7PG</p> <p>Phone number: 01443 815 588 / 01495 226 622 Out of hours emergency: 01443 875 500 Text phone: 01443 863 474 Email address: info@caerphilly.gov.uk Website: www.caerphilly.gov.uk</p>	<p>Cardiff Council</p> <p>County Hall Atlantic Wharf Cardiff CF10 4UW</p> <p>Phone number: (English) 02920 872087 Phone number: (Cymraeg) 02920 872088 Text phone: 02920 872085 Fax: 029 2087 2086 Email address: c2c@cardiff.gov.uk Website: www.cardiff.gov.uk</p>
<p>Carmarthenshire County Council</p> <p>County Hall Carmarthen Carmarthenshire SA31 1JP</p> <p>Phone number: 01267 234 567 Email address: direct@carmarthenshire.gov.uk Website: www.carmarthenshire.gov.uk</p>	<p>Ceredigion County Council</p> <p>Neuadd Cyngor Ceredigion Penmorfa Aberaeron Ceredigion SA46 0PA</p> <p>Phone number: 01545 570 881 Email address: reception@ceredigion.gov.uk Website: www.ceredigion.gov.uk</p>

<p>Conwy County Borough Council</p> <p>Bodlondeb Conwy North Wales LL32 8DU</p> <p>Phone number: 01492 574 000 Fax: 01492 592 114 Email address: information@conwy.gov.uk Website: www.conwy.gov.uk</p>	<p>Denbighshire County Council</p> <p>County Hall Wynnstay Road Ruthin Denbighshire LL15 1YN</p> <p>Phone number: 01824 706 000 Customer service centre: 01824 706 100 (Cymraeg), 01824 706 101 (English) Minicom: 01824 706170 Fax: 01824 706180 Email address: customerservice@denbighshire.gov.uk Website: www.denbighshire.gov.uk</p>
<p>Flintshire County Council</p> <p>County Hall Mold Flintshire CH7 6NB</p> <p>Phone number: 01352 752121 Email address: info@flintshire.gov.uk Website: www.flintshire.gov.uk</p>	<p>Gwynedd County Council</p> <p>Council Offices Shirehall Street Caernafon Gwynedd LL55 1SH</p> <p>Phone number: 01766 771000 Fax: 01286 673 993 Website: www.gwynedd.gov.uk</p>
<p>Isle of Anglesey County Council</p> <p>Council Offices Llangefni Anglesey LL77 7TW</p> <p>Phone number: 01248 750057 Website: www.anglesey.gov.uk</p>	<p>Merthyr Tydfil County Borough Council</p> <p>Civic Centre Castle Street Merthyr Tydfil CF47 8AN</p> <p>Phone number: 01685 725000 Email address: customer.care@merthyr.gov.uk Website: www.merthyr.gov.uk</p>
<p>Monmouthshire County Council</p> <p>County Hall Cwmbran Gwent NP44 2XH</p> <p>Phone number: 01633 644644 Fax: 01633 644 666 Email address: contact@monmouthshire.gov.uk Website: www.monmouthshire.gov.uk</p>	<p>Neath Port Talbot County Borough Council</p> <p>Port Talbot Civic Centre Port Talbot SA13 1PJ</p> <p>Phone number: (English) 01639 686868, Phone number: (Cymraeg) 01639 686869 Fax: 01639 763444 Email address: fcs@npt.gov.uk Website: www.neath-porttalbot.gov.uk</p>

<p align="center">Newport City Council</p> <p align="center">Civic Centre Newport South Wales NP20 4UR</p> <p>Phone number: 01633 656656 Minicom: 01633 656657 Fax: 01633 244721 Email address: info@newport.gov.uk Website: www.newport.gov.uk</p>	<p align="center">Pembrokeshire County Council</p> <p align="center">County Hall Haverfordwest Pembrokeshire SA61 1TP</p> <p>Contact centre: 01437 764 551 Out of hours emergency: 0845 601 5522 Fax: 01437 775 303 Email address: enquiries@pembrokeshire.gov.uk Website: www.pembrokeshire.gov.uk</p>
<p align="center">Swansea City and County Council</p> <p align="center">Civic Centre Oystermouth Road Swansea SA1 3SN</p> <p>Phone number: 01792 636 000 Website: www.swansea.gov.uk</p>	<p align="center">Torfaen County Borough Council</p> <p align="center">Civic Centre Pontypool Torfaen NP4 6YB</p> <p>Phone number: 01495 762200 Fax: 01495 755513 Email address: your.call@torfaen.gov.uk Website: www.torfaen.gov.uk</p>
<p align="center">Powys County Council</p> <p align="center">County Hall Llandrindod Wells Powys LD1 5LG</p> <p>General enquiries number: 0845 055 2155 Out of hours emergency: 0845 054 4847 Email address: customer@powys.gov.uk Website: www.powys.gov.uk</p>	<p align="center">Rhondda Cynon Taf County Borough Council</p> <p align="center">Headquarters The Pavilions, Cambrian Park Clydach Vale Tonypany CF40 2XX</p> <p>General enquiries number: 01443 424000 Out of hours emergency: 01685 876 831 Website: www.rhondda-cynon-taf.gov.uk</p>

<p>Vale of Glamorgan Council</p> <p>Civic Offices Holton Road Barry CF63 4RU</p> <p>Phone number: 01446 700111 Website: www.valeofglamorgan.gov.uk</p>	<p>Wrexham County Borough Council</p> <p>The Guildhall Wrexham LL11 1AY</p> <p>Phone number: 01978 292000 Minicom: 01978 292067 Email address: webmaster@wrexham.gov.uk Website: www.wrexham.gov.uk/</p>
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Draft

Internal Drainage Boards (IDBs) in Wales

An IDB, as referred to in the Flood and Water Management Act 2010, has the same meaning as in section 1 of the Land Drainage Act 1991¹⁸.

IDBs were set up in areas of special drainage need to sustain both agricultural and developed land use. The principal function of IDBs is to manage water levels in their areas to minimise the flood risk and supply water (irrigation) to people, property and land. IDBs have a duty to “exercise a general supervision over matters relating to the drainage of land” in their areas.

Much of their work involves water level management by improving and maintaining rivers, drainage channels and pumping stations for social, environmental and agricultural benefit. IDB membership includes elected members representing the occupiers of the land in the district and members nominated by Local Authorities to represent other local interests.

In Wales there are three IDB's (listed below) and there are a further 11 drainage districts in North Wales that are administered by the Environment Agency Wales.

<p>Caldicot & Wentlooge Levels IDB</p> <p>Pye Corner Broadstreet Common Nash Newport NP18 2BE</p> <p>Phone number: 01633 275922 Fax: 01633 281155 Website: www.caldandwentidb.gov.uk Email: admin@caldandwentidb.gov.uk</p>	<p>Lower Wye IDB</p> <p>Pye Corner Broadstreet Common Nash Newport NP18 2BE</p> <p>Phone number: 01633 275922 Fax: 01633 281155 Website: www.lowerwyeidb.org.uk Email: admin@caldandwentidb.gov.uk</p>
<p>Powysland IDB</p> <p>Wern Farm Burgedin Welshpool SY21 9LQ</p> <p>Phone number: 01691 650200 Website: www.powyslandidb.org.uk Email: Gaw001@gmail.com</p>	

¹⁸ Section 1 of the Land Drainage Act 1991, available from - www.legislation.gov.uk/ukpga/1991/59/section/1

Water Companies in Wales

A 'water company' means a company which holds:

- an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991¹⁹; or
- a licence under Chapter 1A of Part 2 of that Act.

<p>Dŵr Cymru - Welsh Water *</p> <p>Pentwyn Road Nelson Treharris CF46 6LY</p> <p>Head office phone number: 01443 452300</p> <p>Customer services: 0800 052 0140</p> <p>Website: www.dwrcymru.co.uk</p>	<p>Severn Trent Water Ltd</p> <p>Customer Relations Sherbourne House St Martin's Road, Finham Coventry CV3 6SD</p> <p>Tel: 024 7771 5000</p> <p>Website: www.stwater.co.uk</p>
<p>Dee Valley</p> <p>Packsaddle Wrexham Road, Rhostyllen Wrexham LL14 4EH</p> <p>Customer Services number: 01978 833200</p> <p>Fax: 01978 846888</p> <p>Leakline: 0800 298 7112</p> <p>Emergency: 01978 846946</p> <p>Email: contact@deevalleygroup.com</p> <p>Website: Dee Valley Group</p>	<p>Albion Water Limited</p> <p>78 High Street Harpenden Herts AL5 2SP</p> <p>Phone number: 01582 767720</p> <p>Emergencies: 0800 917 5819</p> <p>Email: info@albionwater.co.uk</p> <p>Website: www.albionwater.co.uk</p>
<p>Scottish & Southern Water</p> <p>Scottish and Southern Energy plc. Inveralmond House 200 Dunkeld Road Perth PH1 3AQ</p> <p>Phone number: 0845 744 4555</p> <p>Website: http://www.sse.com/Home/</p>	

* Covers most of Wales.

¹⁹ Water industry Act 1991, available from - www.legislation.gov.uk/ukpga/1991/56/contents

Highways Authority

A Highway Authority has the same meaning given by section 1 of the Highways Act 1980²⁰. Local Authorities in Wales act as highway authorities in respect of local roads²¹.

Draft

²⁰ Highways Act 1980, available from - www.legislation.gov.uk/ukpga/1980/66

²¹ The Welsh Government is responsible for trunk roads and motorways in Wales.

Annex B – Examples of Flood and Coastal Erosion Risk Management Functions

Activity	Flood and Coastal Erosion Risk Management Function Example
Building	flood or erosion defences, drainage in roads, sewers
Cleaning	culverts, gulleys.
Co-operating	working together and co-ordinating activities
De-commissioning	a weir, a flood defence, a reservoir.
Defending	a property, a town, a SSSI.
Development planning	ensuring development takes place without worsening flood risk.
Dredging	a watercourse.
Draining	a highway, a new development.
Forecasting	rainfall, flooding, a tidal surge.
Improving	roads, safety of structures.
Informing	provision of information or data.
Investigating	which authority has relevant functions when a flood occurs and whether they have been exercised.
Maintaining	rivers, structures, drainage systems, sea defences.
Managing	strategies, studies, schemes.
Mapping	historic or predicted flooding.
Monitoring	beach profiles, river flows, asset condition.
Planning	strategies, studies, schemes.
Protecting	people, the environment, infrastructure.
Recovery	after a flood.
Replacing	drain covers, safety signs.
Reporting	to government.
Responding	to an incident.
Supervising	site works, flood risk.
Surveying	defence levels, asset locations, flood extents.
Warning	about flooding, erosion rates.

Explanatory Memorandum for the Information of Assembly Members

Statutory Guidance to Risk Management Authorities - Flood and Water Management Act 2010

The Flood and Water Management Act 2010 identified new responsibilities for organisations involved in flood risk management including the requirement on all relevant authorities to cooperate and share information.

Under Section 8 of the Act, the Welsh Ministers have developed a National Strategy for managing flood and coastal erosion risk in Wales. The strategy provides a framework for flood and coastal erosion risk management underpinned by national objectives.

Section 8(6) states that Welsh Ministers may in particular issue guidance about how Welsh Risk Management Authorities are to comply with co-operation and arrangements (Section 13(1)) and power to request information (Section 14) of the Act.

This guidance is issued under Section 8(6) of the Flood and Water Management Act 2010. Section 8(7) requires that the Welsh Ministers must lay any guidance in draft before the National Assembly for Wales; and it may not be issued if during the period of 40 days beginning with the date of laying (ignoring any periods for which the National Assembly is dissolved or is in recess for more than 4 days) the National Assembly resolves that it should not be issued (in that form).

Constitutional and Legislative Affairs Committee Draft Report

CLA150

Title: Statutory Guidance to Risk Management Authorities – Flood and Water Management Act 2010

1. “The purpose of the guidance is to provide advice to enable Risk Management Authorities to work together constructively to manage flood and coastal erosion risk. It also aims to ensure that when information is requested, it is done in an appropriate way.”
2. On the 18th May 2012, the Statutory Guidance was laid before the National Assembly together with a brief Explanatory Note. Statutory guidance may (or may not) constitute subordinate legislation. The usual test is whether or not the guidance is legislative in character. The persons (including public bodies) to whom the guidance is directed are required to have regard to such guidance. In practice this means that they must have a very good reason for not following that guidance. That reason must be capable of justifying the course of action adopted in any judicial review proceedings.
3. The Guidance under consideration is largely concerned with practical arrangements, and includes information such as contact details of the relevant authorities. It might therefore be argued that it is not legislative in character. However, the procedure applicable to it is distinctly legislative in character.

Enabling power

4. The enabling power is section 8 of the Flood and Water Management Act 2010 (“the Act”), subsection (1) of which provides that –

“The Welsh Ministers must develop, maintain and apply a strategy for flood and coastal erosion risk management in Wales (a “national flood and coastal erosion risk management strategy”).”

It is in that context that subsection (6) of that section provides that –

“The Welsh Ministers may, in particular, issue guidance about how Welsh risk management authorities are to comply with the duties under sections 13(1) and 14.”

5. Section 13(1) requires relevant authorities to “*co-operate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions.*”
Section 14 empowers Welsh Ministers, the Environment Agency and

lead local flood authorities to request a person to provide information in connection with their flood and coastal erosion risk management functions.

The guidance applies to the duty to co-operate and the requesting of information.

Procedure

6. What makes this guidance unusual is the procedure applicable to it. That procedure is set out in section 8(7) as follows –
“The Welsh Ministers must lay any guidance in draft before the National Assembly for Wales; and it may not be issued if during the period of 40 days beginning with the date of laying (ignoring any periods for which the National Assembly is dissolved or is in recess for more than 4 days) the National Assembly resolves that it should not be issued (in that form).”

7. Statutory guidance is not usually subject to an Assembly procedure, but in this case there is a variation on the negative procedure. As in negative procedure cases, the guidance can be made and come into force unless the Assembly resolves to the contrary within a specified period. However, in the case of statutory instruments made under a negative procedure, the instruments are normally made before they are laid. In this case, the guidance is laid in draft, and may not be made until the end of the specified period. The procedure therefore provides a greater measure of scrutiny than a standard negative procedure.

Scrutiny

8. If the guidance is therefore regarded as subordinate legislation not made by statutory instrument, the Constitutional and Legislative Affairs Committee may report on it under Standing Order 21.7(i). Even if it is not so regarded, the Committee may still report on it as being a legislative matter of a general nature under Standing Order 21.7(v). It would be such a matter by virtue of the fact that similar procedures are proposed in the School Standards and Organisation (Wales) Bill (“the Bill”) currently before the Assembly. Section 33 of the Bill gives the power to Welsh Ministers to issue school improvement guidance but subject to a scrutiny procedure laid out in section 34 of the Bill. Similarly section 39 of the Bill sets out a procedure for Welsh Ministers to issue a Statutory Code on school organisation. The present case therefore provides an opportunity for the Committee to express a view on whether this procedure is appropriate, and whether it is, by virtue of that procedure, to be regarded as subordinate legislation for the purposes of the Assembly and its Standing Orders.

Technical Scrutiny

9. For the record, no technical points are identified that would have been reported under Standing Order 21.2 if this had been a statutory instrument.

Merits Scrutiny

10. Similarly, no merits points are identified that would have been reported under Standing Order 21.3 if this had been a statutory instrument.

This matter is drawn to the attention of the Assembly under Standing Orders 21.7 because it raises legislative and procedural issues likely to be of interest to the Assembly.

Legal Advisers

Constitutional and Legislative Affairs Committee

May 2012

Agenda Item 6

Rt Hon Elfyn Llwyd MP – Written Submission

Wales is undoubtedly maturing as a nation. As our means of policy shaping and law making develop and Cardiff Bay grows in confidence, the structure of our justice system must develop to encase it. It is remarkable to consider that Wales is the only country in the world that has a legislature, but no legal jurisdiction of its own.

Certainly, there are few practical impediments to addressing this discrepancy. Northern Ireland and Scotland, after all, operate successful systems without being tied to England, and Wales' General Counsel himself, Theodore Huckle QC, has insisted that separate jurisdictions can exist within the United Kingdom.

Indeed, it is arguable that debates surrounding the development of Wales as a jurisdiction have hitherto been impeded by the comparatively weak devolution settlement obtained by Wales, as compared with those of Northern Ireland and Scotland. But the burgeoning maturity of our justice system cannot be ignored. Truly, the fact that the Welsh Government is holding this consultation on a separate justice system for Wales is testament to how central – perhaps urgent – this debate is becoming.

In recent years, more and more people have joined the ranks of those experts and academics, among them Professor R Gwynedd Parry from the Institute of Hywel Dda, the solicitor Fflur Jones, Winston Roddick QC and His Honour Philip Richards, calling for a just and comprehensive legal system fit for the modern Wales.

Moreover, a comprehensive victory in the 2011 Referendum showed that the majority of Welsh voters believe that Cardiff, not Westminster, should be the home of the decisions which affect their day to day lives.

Much has been written about the gradual establishment of 'Legal Wales'. In 2007, the Wales and Chester Circuit was disbanded and Wales became a separate circuit, and both divisions of the Court of Appeal (criminal and civil), as well as the Administrative Court sit in Cardiff. There is now a Lord Chief Justice of England and Wales following Lord Bingham's decision to add 'Wales' to his title.

Already law applying in Wales is diverging from that of England. Lawyers who practice environmental, criminal, family and obviously administrative law must have a thorough knowledge of the corpus of Welsh law if they are to practice in Wales.

A question which must be addressed is whether a separate Welsh jurisdiction is a precondition of greater legislative powers for the Assembly, or whether this would be a product of enhanced powers. The Assembly must urgently tackle this issue.

This feeds in to the wider question of what is required in order to establish a separate jurisdiction. The criteria usually employed is that the jurisdiction should operate in a defined territory, that the jurisdiction should have a distinct body of law, and that it should be supported by its own court structure and legal institutions.

Since the Local Government Act 1972, Wales has been a defined territory. Wales also has a distinct and growing body of law (whether this is large enough is a debatable issue). In a sense, Wales already has its own jurisdiction, since laws passed by the Assembly pertain only to Wales. Although criminal law has yet to be devolved, any new Act passed by the Assembly may contain a new or amended criminal offence. Examples are fines imposed on shop owners who do not charge for plastic bags used, as well as those smoking in prohibited areas. But a separate courts structure to support this budding jurisdiction would undoubtedly facilitate the process.

I would agree with Fflur Jones who has argued that the Assembly should focus on establishing the minimum amount of distinctive Welsh jurisdiction which is compatible with transferring powers on the Scottish model. By this I mean that, if our aspiration is to move to the reserved powers model, the appropriate administrative systems must be established for Wales to be able to cope with those powers.

In order to do this, Schedule 7 of the Government of Wales Act 2006 should be amended to include the administration of justice. Further to this, an independent prosecution service should be set up in Wales, and Wales should assume responsibility for further administration of the courts. A Welsh Judicial Appointments Commission should be tasked with selecting the judiciary, magistrates and members of tribunals operating in Wales. In the longer term, and following a new Government of Wales Act, Wales should look towards devolving the Crime Prosecution Service; responsibilities for the probation service, prisons and policing; a separate social security system; a legal aid system administered on a Wales-only basis; and perhaps separate qualifications for a Welsh legal profession. A consensus will also have to be reached on whether appointment procedures for the judiciary should reflect the needs of what will be a more dualistic body of law.

In all of this, the Assembly would need to obtain additional financial provisions to cover the costs of the court system and the administration of justice.

The implications these developments could have for cross-border practitioners will be significant. Some have suggested that it might be attractive to develop a system similar to that which exists between lawyers in England, Wales and the Republic of Ireland, where the qualifications of each profession are mutually recognised, as opposed to the system operating in Scotland with the qualified lawyer transfer tests (QLTTs). But thought should also be given to the practicality of adopting the QLTT system in the event of separate qualifications developing.

But it is perhaps from Northern Ireland that Wales can learn most in respect to developing a separate legal jurisdiction. Alongside introducing major reform initiatives for specific programmes including the criminal legal aid system, prisons, youth justice and community safety, devolution has allowed the relevant departments and bodies in Northern Ireland to bring about a qualitative change in the justice system's relationship with the public it serves. Commitments have been given to improving the support of victims, tackling delay and developing better protection for older people.

The devolution of justice matters to the region has also a real impact on policy formation, allowing the government to consult with relevant organisations and stakeholders so that laws are drafted which meet the priorities of the local population. In the event of the devolution of the justice system to Wales, there would be a great need for engagement with the public and third sector when developing policy. The emergence of 'legal Wales' will have a holistic impact on the whole of society – not just the justice system itself.

Finally, when we consider that the justice system in Northern Ireland employs roughly 16,000 people, including police and prison officers, probation staff, youth justice and courts services, it is clear to see how the Welsh economy and jobs market could benefit from the establishment of a separate jurisdiction.

The fact that the Welsh Assembly is currently holding a consultation on the emergence of a separate Welsh jurisdiction speaks volumes about how central this issue will become in the months and years ahead. There will be significant challenges, both practical and constitutional, for the legal system in Wales to face, but they are challenges which I believe we are more than capable of meeting.

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

School Standards and Organisation (Wales) Bill

[AS INTRODUCED]

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School Standards and Organisation (Wales) Bill

[AS INTRODUCED]

An Act of the National Assembly for Wales to reform the powers of local authorities and the Welsh Ministers to intervene in the conduct of schools maintained by local authorities that are causing concern; to reform the powers of the Welsh Ministers to intervene in the exercise of education functions by local authorities; to provide for school improvement guidance; to reform the statutory arrangements for the organisation of maintained schools; to provide for Welsh in education strategic plans; to make miscellaneous provision in relation to maintained schools; and for connected purposes.

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

PART 1

INTRODUCTION

1 Overview of this Act

- (1) This Act has 6 Parts.
- (2) Part 2 is divided into 3 Chapters containing provisions concerned with maintaining and improving standards—
 - (a) in maintained schools, and
 - (b) in the exercise of education functions by local authorities.
- (3) Chapter 1 of Part 2 (including Schedule 1)—
 - (a) sets out the grounds for intervention by local authorities and the Welsh Ministers in the conduct of maintained schools that are causing concern, and
 - (b) provides a range of intervention powers to enable local authorities and the Welsh Ministers to deal with the causes of concern.
- (4) Chapter 2—
 - (a) sets out the grounds for intervention by the Welsh Ministers in the exercise of education functions by local authorities that are causing concern, and
 - (b) provides a range of intervention powers to enable the Welsh Ministers to deal with the causes of concern.

- (5) Chapter 3 makes provision for the Welsh Ministers to give guidance to the governing bodies of maintained schools, the head teachers of such schools and local authorities on how functions should be exercised with a view to improving the standard of education provided in maintained schools.
- 5 (6) Part 3 is divided into 6 Chapters containing provision about the organisation of maintained schools.
- (7) Chapter 1 of Part 3 provides for a School Organisation Code about the exercise of functions under Part 3.
- 10 (8) Chapter 2 (including Schedules 2 to 5) makes provision requiring the establishment, alteration and discontinuance of maintained schools in accordance with a specified process.
- (9) Chapter 3 provides for the rationalisation of school places if the Welsh Ministers are of the opinion that there is excessive or insufficient provision for primary or secondary education in maintained schools.
- 15 (10) Chapter 4 provides for the making of regional provision for special educational needs.
- (11) Chapter 5 provides for powers for the Welsh Ministers to re-structure sixth form education.
- (12) Chapter 6 provides for miscellaneous and supplemental matters relating to school organisation.
- 20 (13) Part 4 makes provision for Welsh in education strategic plans, which are to be –
- (a) prepared by local authorities,
 - (b) approved by the Welsh Ministers, and
 - (c) published and implemented by local authorities (sections 85, 86 and 88).
- (14) Part 4 also provides a power exercisable by regulations for the Welsh Ministers to require local authorities to carry out an assessment of the demand among parents for Welsh medium education for their children (section 87).
- 25 (15) Part 5 makes provision about miscellaneous functions relating to maintained schools, including provision –
- (a) requiring local authorities to provide breakfasts for pupils at maintained primary schools at the request of the governing bodies of those schools (sections 89 to 91);
 - (b) amending the existing powers of local authorities and governing bodies to charge for school meals, so that –
- (i) a related requirement to charge every person the same price for the same quantity of the same item is removed, and
 - (ii) a new requirement that the price charged for an item does not exceed the cost of providing that item is imposed (section 92);
- 35

- (c) requiring local authorities to secure reasonable provision for a service providing counselling in respect of health, emotional and social needs for specified school pupils and other children (section 93);
- (d) requiring governing bodies of maintained schools to hold a meeting if requested to do so by parents in a petition (section 95) and repealing an existing duty to hold an annual parents' meeting (section 96);
- (e) repealing the Welsh Ministers' duty to issue a code of practice for securing effective relationships between local authorities and maintained schools (section 97).

(16) Part 6—

- (a) introduces Schedule 6, which makes minor and consequential amendments to other legislation arising from the provisions of this Act;
- (b) contains definitions that apply for the purposes of this Act generally and an index of definitions that apply to a number of provisions, but not the whole Act (section 99);
- (c) contains other provisions which apply generally for the purposes of this Act.

PART 2

STANDARDS

CHAPTER 1

INTERVENTION IN CONDUCT OF MAINTAINED SCHOOLS

Grounds for intervention

2 Grounds for intervention

For the purposes of this Chapter, the grounds for intervention in the conduct of a maintained school are as follows—

GROUND 1 - The standards of performance of pupils at the school are unacceptably low.

For this purpose, the standards of performance of pupils are low if they are low by reference to any one or more of the following—

- (a) the standards that the pupils might in all the circumstances reasonably be expected to attain;
- (b) where relevant, the standards previously attained by them;
- (c) the standards attained by pupils at comparable schools.

GROUND 2 - There has been a breakdown in the way the school is managed or governed.

GROUND 3 - the behaviour of pupils at the school or any action taken by those pupils or their parents is severely prejudicing, or is likely to severely prejudice, the education of any pupils at the school.

GROUND 4 - The safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

GROUND 5 - The governing body or head teacher has failed, or is likely to fail, to comply with a duty under the Education Acts.

GROUND 6 - The governing body or head teacher has acted, or is proposing to act, unreasonably in the exercise of any of its or his or her functions under the Education Acts.

GROUND 7 - Her Majesty's Chief Inspector of Education and Training in Wales ("the Chief Inspector") has given a notice under section 37(2) of the Education Act 2005 that the school requires significant improvement and that notice has not been superseded by –

- (a) the Chief Inspector giving notice under that section that special measures are required to be taken in relation to the school, or
- (b) a person making a subsequent inspection making a report stating that in his or her opinion the school no longer requires significant improvement.

GROUND 8 - Her Majesty's Chief Inspector of Education and Training in Wales has given a notice under section 37(2) of the Education Act 2005 that special measures are required to be taken in relation to the school and that notice has not been superseded by a person making a subsequent inspection making a report stating that in his or her opinion the school no longer requires special measures.

Intervention by a local authority

3 Warning notices

- (1) If a local authority is satisfied that one or more of grounds 1 to 6 exist in relation to one of its maintained schools, the authority may give a warning notice to the governing body of the school.
- (2) The local authority must specify each of the following in the warning notice –
 - (a) the grounds for intervention;
 - (b) the reasons why the authority is satisfied that the grounds exist;
 - (c) the action the authority requires the governing body to take in order to deal with the grounds for intervention;
 - (d) the period within which the action is to be taken by the governing body ("the compliance period");
 - (e) the action the authority is minded to take if the governing body fails to take the required action.

- (3) If the local authority gives a warning notice to the governing body of a school, it must give a copy of the warning notice to the head teacher at the same time.

4 Power to intervene

- (1) A local authority has the power to intervene in the conduct of one of its maintained schools under this Chapter if subsection (2), (3) or (4) applies.

- (2) This subsection applies if—

(a) the local authority has given a warning notice under section 3 to the governing body of the school, and

(b) the governing body has failed to comply, or secure compliance, with the notice to the authority's satisfaction within the compliance period.

- (3) This subsection applies if the local authority is satisfied that one or more of grounds 1 to 6 exist in relation to the school and it has reason to believe that—

(a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter, or

(b) the governing body is unlikely to be able to comply, or secure compliance, with a warning notice.

- (4) This subsection applies if—

(a) ground 7 (school requiring significant improvement) or ground 8 (school requiring special measures) exists in relation to the school, and

(b) a period of not less than 10 days has elapsed since the date on which the Chief Inspector gave notice to the local authority under section 37(2) of the Education Act 2005, subject to subsection (5).

- (5) The Welsh Ministers may, in relation to a particular school, determine that subsection (4) (b) has effect as if the reference to 10 days were to a shorter period specified in the determination.

- (6) Where a local authority has the power to intervene, it must keep the circumstances giving rise to the power under review.

- (7) If the authority concludes that the grounds for intervention have been dealt with to its satisfaction or that exercise of its powers under this Chapter would not be appropriate for any other reason, it must notify the governing body of its conclusion in writing.

- (8) A local authority's power to intervene continues in effect until one of the following events takes place—

(a) the authority gives notice under subsection (7);

(b) the Welsh Ministers determine that the power to intervene is no longer in effect and give notice in writing to the local authority and the governing body of their determination;

(c) the Welsh Ministers give a warning notice to the governing body of the school under section 10.

- (9) A local authority which has the power to intervene is not limited to taking the action it said it was minded to take in a warning notice.

5 Power to require governing body to secure advice or collaborate

- (1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) The local authority may, with a view to improving the performance of the school, direct the governing body of the school to do either or both of the following—
- (a) enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature;
 - (b) exercise such of the powers under section 5(2) of the Education (Wales) Measure 2011 (powers to collaborate) as are specified in the direction, subject to provision made in regulations under section 6 of that Measure.
- (3) Before giving a direction the local authority must consult—
- (a) the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (c) in the case of any other foundation or voluntary school, the person who appoints the foundation governors.
- (4) A direction under subsection (2)(a) may require the contract or other arrangement to contain specified terms and conditions.

6 Power to appoint additional governors

- (1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) The local authority may appoint as many additional governors to the governing body of the school as it thinks fit; and the instrument of government for the school has effect as if it provided for such appointments (despite anything in regulations under section 19 of the Education Act 2002).
- (3) The local authority may nominate one of those governors to be the chair of the governing body in place of any person who has been elected as chair of that body.
- (4) Before making any such appointment or nomination in relation to a voluntary aided school, the local authority must consult—
- (a) in the case of a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, or
 - (b) in any other case, the person who appoints the foundation governors.
- (5) A governor appointed under this section is to hold office for a period determined by the local authority.
- (6) A governor nominated by the local authority to be the chair of the governing body is to be the chair for a period determined by the local authority.
- (7) The local authority may pay remuneration and allowances to governors appointed under this section.

7 Power of local authority to constitute governing body of interim executive members

- (1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) The local authority may give the governing body of the school a notice in writing stating that, as from a date specified in the notice, the governing body is to be constituted in accordance with Schedule 1 (governing bodies consisting of interim executive members).
- (3) Before giving a notice the local authority must—
- (a) consult the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, consult the appropriate diocesan authority,
 - (c) in the case of any other foundation or voluntary school, consult the person who appoints the foundation governors, and
 - (d) obtain the consent of the Welsh Ministers.

8 Power of local authority to suspend right to delegated budget

- (1) This section applies if—
- (a) a local authority has the power to intervene in the conduct of a maintained school, and
 - (b) the school has a delegated budget within the meaning of Part 2 of the School Standards and Framework Act 1998.
- (2) The local authority may suspend the governing body's right to a delegated budget by giving the governing body notice of the suspension.
- (3) The suspension of the right to a delegated budget takes effect on receipt of the notice by the governing body.
- (4) If the local authority gives a notice suspending the right to a delegated budget, it must give a copy of the notice to the head teacher at the same time.
- (5) A suspension imposed under this section has effect for the purposes of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools) as if made under paragraph 1 of Schedule 15 to that Act (suspension of financial delegation).

9 General power to give directions and take steps

- (1) This section applies if the local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) If the local authority think it is appropriate for the purposes of dealing with the grounds for intervention, the authority may—
- (a) give directions to the governing body or head teacher, or
 - (b) take any other steps.

*Intervention by the Welsh Ministers***10 Warning notice**

- (1) The Welsh Ministers may give a warning notice to the governing body of a maintained school if –
- 5 (a) they are satisfied that one or more of grounds 1 to 6 exist in relation to the school, and
- (b) the local authority that maintains the school either –
- 10 (i) has not given a warning notice to the governing body under section 3 on one or more of those grounds, or
- (ii) has given a warning notice, but in terms that are inadequate in the opinion of the Welsh Ministers.
- (2) The Welsh Ministers must specify each of the following in the warning notice –
- (a) the grounds for intervention;
- 15 (b) the reasons why they are satisfied that the grounds exist;
- (c) the action they require the governing body to take in order to deal with the grounds for intervention;
- (d) the period within which the action is to be taken by the governing body (“the compliance period”);
- 20 (e) the action they are minded to take if the governing body fails to take the required action.
- (3) If the Welsh Ministers give a warning notice to the governing body of a school, they must give a copy of the warning notice to the local authority and the head teacher at the same time as they give the warning notice to the governing body.

11 Power of the Welsh Ministers to intervene

- 25 (1) The Welsh Ministers have the power to intervene in the conduct of a maintained school under this Chapter if subsection (2), (3), (4) or (5) applies.
- (2) This subsection applies if –
- (a) the local authority has given a warning notice under section 3 to the governing body of the school,
- 30 (b) the governing body has failed to comply, or secure compliance, with the notice to the Welsh Ministers’ satisfaction within the compliance period, and
- (c) the Welsh Ministers are satisfied that the local authority has not taken, and is not likely take, adequate action for the purposes of dealing with the grounds for intervention.
- 35 (3) This subsection applies if –
- (a) the Welsh Ministers have given a warning notice under section 10 to the governing body of the school, and

(b) the governing body has failed to comply, or secure compliance, with the notice to the Welsh Ministers' satisfaction within the compliance period.

(4) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 6 exist in relation to the school and they have reason to believe that—

(a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter, or

(b) the governing body is unlikely to be able to comply, or secure compliance, with a warning notice.

(5) This subsection applies if—

(a) ground 7 (school requiring significant improvement) or ground 8 (school requiring special measures) exists in relation to the school, and

(b) a period of not less than 10 days has elapsed since the date on which the Chief Inspector gave notice to the Welsh Ministers under section 37(2) of the Education Act 2005, subject to subsection (6).

(6) The Welsh Ministers may, in relation to a particular school, determine that subsection (5) (b) has effect as if the reference to 10 days were to a shorter period specified in the determination.

(7) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.

(8) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that exercise of their powers under this Chapter would not be appropriate for any other reason, they must notify the governing body and the local authority of their conclusion in writing.

(9) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (8).

(10) Where the Welsh Ministers have the power to intervene they are not limited to taking the action they said they were minded to take in a warning notice.

12 Power to require governing body to secure advice or collaborate

(1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.

(2) The Welsh Ministers may, with a view to improving the performance of the school, direct the governing body of the school to do either or both of the following—

(a) enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature;

(b) exercise such of the powers under section 5(2) of the Education (Wales) Measure 2011 (powers to collaborate) as are specified in the direction, subject to provision made in regulations under section 6 of that Measure.

- (3) Before giving a direction the Welsh Ministers must consult—
- (a) the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (c) in the case of any other foundation or voluntary school, the person who appoints the foundation governors.
- (4) A direction under subsection (2)(a) may require the contract or other arrangement to contain specified terms and conditions.

13 Power of Welsh Ministers to appoint additional governors

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.
- (2) The Welsh Ministers may appoint as many additional governors to the governing body of the school as they think fit; and the instrument of government for the school has effect as if it provided for such appointments (despite anything in the regulations under section 19 of the Education Act 2002).
- (3) The Welsh Ministers may nominate one of those governors to be the chair of the governing body in place of any person who has been elected as chair of that body.
- (4) Before making any such appointment or nomination in relation to a voluntary aided school, the Welsh Ministers must consult—
- (a) in the case of a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, or
 - (b) in any other case, the person who appoints the foundation governors.
- (5) A governor appointed under this section is to hold office for a period determined by the Welsh Ministers.
- (6) A governor nominated by the Welsh Ministers to be the chair of the governing body is to be the chair for a period determined by the Welsh Ministers.
- (7) The Welsh Ministers may pay remuneration and allowances to governors appointed under this section.
- (8) Where the Welsh Ministers have exercised their power under this section in relation to any school—
- (a) the local authority may not suspend the governing body's right to a delegated budget under paragraph 1 of Schedule 15 to the School Standards and Framework Act 1998, and
 - (b) if the local authority has already exercised that power or its power under section 8, the Welsh Ministers may revoke the suspension.

(9) Where the Welsh Ministers have exercised their power under this section in relation to a voluntary aided school, nothing in regulations under section 19 of the Education Act 2002 is to be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Welsh Ministers under this section.

- (10) The revocation of a suspension under subsection (8)(b) –
- (a) must be notified to the local authority in writing, and
 - (b) takes effect from the date specified in that notification.

14 Power of Welsh Ministers to constitute governing body of interim executive members

(1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.

(2) The Welsh Ministers may give the governing body of the school a notice in writing stating that, as from the date specified in the notice, the governing body is to be constituted in accordance with Schedule 1 (governing bodies consisting of interim executive members).

(3) Before giving a notice the Welsh Ministers must consult –

- (a) the local authority that maintains the school,
- (b) the governing body of the school,
- (c) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
- (d) in the case of any other foundation or voluntary school, the person who appoints the foundation governors.

(4) The Welsh Ministers are not obliged to consult the persons mentioned in subsection (3)(b) to (d) if the local authority have consulted them about the constitution of a governing body under section 7 on the basis of a power to intervene brought to an end by effect of section 4(8)(b) or (c).

15 Power of Welsh Ministers to direct federation of schools

(1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school (“the school causing concern”).

(2) The Welsh Ministers may direct any of the following persons to provide for one or more of the arrangements set out in subsection (3) –

- (a) a local authority;
- (b) a governing body of a maintained school;
- (c) a governing body of a federation.

(3) The arrangements are –

- (a) the federation of the school causing concern and one or more maintained schools;
- (b) the federation of the school causing concern and an existing federation;

- (c) the federation of the school causing concern and an existing federation and one or more maintained schools;
- (d) where the school causing concern is part of a federation, the federation of that federation and one or more maintained schools;
- 5 (e) where the school causing concern is part of a federation, the federation of that federation and another existing federation;
- (f) where the school causing concern is part of a federation, the federation of that federation and an existing federation and one or more maintained schools;
- 10 (g) where the school causing concern is part of a federation, for the school to leave that federation.

(4) Before giving a direction under subsection (2), the Welsh Ministers must consult—

- (a) the local authority,
- (b) the governing bodies concerned,
- 15 (c) in the case of a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and
- (d) in the case of any other foundation or voluntary school, the person who appoints the foundation governors.

(5) In this section “federation” has the meaning given by section 21(1) of the Education (Wales) Measure 2011.

20 **16 Power of Welsh Ministers to direct closure of school**

(1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school on the basis of ground 8 (school requiring special measures).

(2) The Welsh Ministers may give a direction to the local authority requiring the school to be discontinued on a date specified in the direction.

25 (3) Before giving a direction under subsection (2), the Welsh Ministers must consult—

- (a) the local authority that maintains the school,
- (b) the governing body of the school,
- (c) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority,
- 30 (d) in the case of any other foundation or voluntary school, the person who appoints the foundation governors, and
- (e) any other persons the Welsh Ministers consider appropriate.

(4) On giving a direction to discontinue the school, the Welsh Ministers must also give notice in writing of the direction to the governing body of the school and its head teacher.

35 (5) Where the local authority is given a direction under subsection (2), it must discontinue the school in question on the date specified in the direction; and nothing in Part 3 applies to the discontinuance of the school under this section.

- (6) In this section any reference to the discontinuance of a maintained school is to the local authority ceasing to maintain it.

17 General power to give directions and take steps

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.
- (2) If the Welsh Ministers think it is appropriate for the purposes of dealing with the grounds for intervention, the Welsh Ministers may –
- (a) give directions to the governing body or head teacher, or
 - (b) take any other steps.

Supplementary

18 Governing bodies consisting of interim executive members

Schedule 1 (appointment of members of interim executive boards, the functions of boards, their procedures and related matters) has effect.

19 Directions

- (1) A governing body of a maintained school or a head teacher subject to a direction under this Chapter must comply with it.
- (2) This includes a direction to exercise a power or duty that is contingent upon the opinion of the governing body or head teacher.
- (3) A direction under this Chapter –
- (a) must be in writing;
 - (b) may be varied or revoked by a later direction;
 - (c) is enforceable by mandatory order on application by, or on behalf of, the person who gave the direction.

20 Guidance

In exercising its functions under this Chapter, a local authority must have regard to guidance given by the Welsh Ministers.

CHAPTER 2

INTERVENTION IN LOCAL AUTHORITIES

Grounds for intervention

21 Grounds for intervention

For the purposes of this Chapter, the grounds for intervention in the exercise by a local authority of its education functions are as follows –

- GROUND 1 - The local authority has failed, or is likely to fail, to comply with a duty that is an education function.

GROUND 2 - The local authority has acted, or is proposing to act, unreasonably in the exercise of an education function.

GROUND 3 - The local authority is failing, or is likely to fail, to perform an education function to an adequate standard.

5

Warning notices

22 Warning notice

- (1) The Welsh Ministers may give a warning notice to a local authority if they are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority.
- (2) The Welsh Ministers must specify each of the following in the warning notice –
- 10 (a) the grounds for intervention;
- (b) the reasons why they are satisfied that the grounds exist;
- (c) the action they require the local authority to take in order to deal with the grounds for intervention;
- 15 (d) the period within which the action is to be taken by the local authority (“the compliance period”);
- (e) the action they are minded to take if the local authority fails to take the required action.

Powers of intervention

23 Power of Welsh Ministers to intervene

20

- (1) The Welsh Ministers have the power to intervene under this Chapter in the exercise of education functions by a local authority if subsection (2) or (3) applies.
- (2) This subsection applies if –
- 25 (a) the Welsh Ministers have given a warning notice, and
- (b) the local authority has failed to comply, or secure compliance, with the notice to the Welsh Ministers’ satisfaction within the compliance period.
- (3) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority and they have reason to believe that –
- 30 (a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter, or
- (b) the local authority is unlikely to be able to comply, or secure compliance, with a warning notice.
- (4) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.
- 35 (5) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that exercise of their powers under this Chapter would not be appropriate for any other reason, they must notify the local authority of their conclusion in writing.

- (6) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (5).
- (7) Where the Welsh Ministers have the power to intervene, they are not limited to taking the action they said they were minded to take in a warning notice.

5 **24 Power to require local authority to obtain advisory services**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may direct the local authority to enter into a contract or other arrangement with a specified person, or a person falling within a specified class for the provision to the authority or the governing body of a school maintained by it (or both), of specified services of an advisory nature.
- (3) The direction may require the contract or other arrangement to contain specified terms and conditions.
- (4) In this section "specified" means specified in a direction under this section.

15 **25 Power to require performance of functions by other persons on behalf of authority**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may give such directions to the local authority or any of its officers as they think are appropriate for securing that the functions to which the grounds for intervention relate are performed on behalf of the authority by a person specified in the direction.
- (3) A direction under subsection (2) may require that any contract or other arrangement made by the authority with the specified person contains terms and conditions specified in the direction.

25 **26 Power to require performance of functions by Welsh Ministers or nominee**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may direct that the functions to which the grounds for intervention relate are to be exercised by the Welsh Ministers or a person nominated by them.
- (3) If a direction is made under subsection (2), the local authority must comply with the instructions of the Welsh Ministers or their nominee in relation to the exercise of the functions.

30 **27 Power to direct exercise of other education functions**

- (1) If the Welsh Ministers think it is expedient, a direction under section 25 or 26 may relate to the performance of education functions in addition to the functions to which the grounds for intervention relate.

- (2) The Welsh Ministers may have regard (among other things) to financial considerations in deciding whether it is expedient that a direction should relate to education functions other than functions relating to the grounds for intervention.

28 General power to give directions and take steps

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) If the Welsh Ministers think it is appropriate in order to deal with the grounds for intervention, the Welsh Ministers may –
- (a) give directions to the local authority or any of its officers, or
 - (b) take any other steps.

Supplementary

29 Directions

- (1) A local authority, or an officer of an authority, subject to a direction or instruction under this Chapter must comply with it.
- (2) This includes a direction or an instruction to exercise a power or duty that is contingent upon the opinion of the local authority or an officer of the authority.
- (3) A direction under this Chapter –
- (a) must be in writing;
 - (b) may be varied or revoked by a later direction;
 - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

30 Duty to co-operate

- (1) A local authority and the governing body of a maintained school must give the Welsh Ministers and any person specified in subsection (3) as much assistance in connection with the exercise of functions under or by virtue of this Chapter as they are reasonably able to give.
- (2) The governing body of a maintained school and the local authority that maintains the school must also secure, so far as reasonably practicable, that persons who work at the school do the same.
- (3) The specified persons are –
- (a) any person authorised for the purposes of this section by the Welsh Ministers;
 - (b) any person acting under directions under this Chapter;
 - (c) any person assisting –
 - (i) the Welsh Ministers, or
 - (ii) a person mentioned in paragraph (a) or (b).

31 Powers of entry and inspection

- (1) A person falling within subsection (2) has at all reasonable times –
- (a) a right of entry to the premises of the local authority in question and any school maintained by it;
 - 5 (b) a right to inspect, and take copies of, any records or other documents kept by the authority or any school maintained by it, and any other documents containing information relating to the authority or any such school, which the person considers relevant to the exercise by the person of functions under or by virtue of this Chapter.
- 10 (2) The following persons fall within this subsection –
- (a) the person specified in a direction under section 24 or, where the direction specifies a class of persons, the person with whom the local authority enter into the contract or other arrangement required by the direction;
 - (b) the person specified in a direction under section 25;
 - 15 (c) the Welsh Ministers in pursuance of a direction under section 26;
 - (d) the person nominated by direction under section 26.
- (3) In exercising the right under subsection (1)(b) to inspect records or other documents, a person (“P”) –
- 20 (a) is entitled to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
 - (b) may require the following persons to provide any assistance P may reasonably require (including, among other things, the making of information available for inspection or copying in a legible form) –
 - 25 (i) the person by whom or on whose behalf the computer is or has been so used;
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (4) Any reference in this section to a person falling within subsection (2) includes a reference to any person assisting that person.
- 30 (5) In this section “document” and “records” each include information recorded in any form.

CHAPTER 3**SCHOOL IMPROVEMENT GUIDANCE****32 Meaning of “school authority”**

35 In this Chapter “school authority” means –

- (a) a local authority in the exercise of its education functions;
- (b) the governing body of a maintained school;
- (c) the head teacher of a maintained school.

33 Power to issue school improvement guidance

- 5 (1) The Welsh Ministers may issue guidance to a school authority on how the authority should exercise its functions with a view to improving the standard of education provided by any maintained school in respect of which the authority exercises functions (“school improvement guidance”).
- (2) The Welsh Ministers—
- 10 (a) may issue school improvement guidance to school authorities generally or to one or more particular authorities;
- (b) may issue different school improvement guidance to different school authorities;
- (c) may revise or revoke school improvement guidance by further guidance;
- (d) may revoke school improvement guidance by issuing a notice to the school
- 15 authorities to which it is directed.
- (3) The Welsh Ministers must ensure that school improvement guidance, or a notice revoking such guidance, states—
- (a) that it is issued under this section, and
- (b) the date on which it is to take effect.
- 20 (4) The Welsh Ministers must arrange for school improvement guidance, or a notice revoking such guidance, to be published.

34 Consultation and National Assembly for Wales procedures

- 25 (1) Before issuing or revising school improvement guidance, the Welsh Ministers must consult school authorities likely to be affected by the guidance and such other persons as the Welsh Ministers think fit on a draft of the guidance.
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the guidance, the Welsh Ministers must not issue it in the form of that draft.
- 30 (4) If no such resolution is made before the end of that period, the Welsh Ministers must issue the guidance (or revised guidance) in the form of the draft.
- (5) The 40 day period—
- (a) begins on the day on which the draft is laid before the National Assembly, and

(b) does not include any time during which the National Assembly is dissolved or is in recess for more than four days.

(6) Subsection (3) does not prevent a new draft of proposed guidance or proposed revised guidance from being laid before the National Assembly.

5 **35 Duty to follow school improvement guidance**

(1) A school authority must follow the course set out in school improvement guidance issued to it in accordance with this Chapter when exercising a power or duty (including a power or duty that is contingent upon the opinion of the school authority); but this is subject to the following provisions of this section.

10 (2) A school authority that is a local authority is not subject to the duty under subsection (1) so far as –

(a) the authority thinks there is good reason for it not to follow the guidance in particular categories of case or at all,

15 (b) it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the guidance, and

(c) a policy statement issued by the authority in accordance with section 36 is in effect.

(3) A school authority that is the governing body of a maintained school or its head teacher is not subject to the duty under subsection (1) so far as –

20 (a) the governing body thinks there is good reason for it or the head teacher not to follow the guidance in particular categories of case or at all,

(b) the governing body decides on an alternative policy for the exercise of its, or the head teacher's, functions in respect of the subject matter of the guidance, and

25 (c) a policy statement issued by the governing body in accordance with section 36 is in effect.

(4) Where subsection (2) or (3) applies in the case of a school authority, the authority –

(a) must follow the course set out in the policy statement, and

(b) is subject to the duty under subsection (1) only so far as the subject matter of the school improvement guidance is not displaced by the policy statement.

30 (5) The duties in subsections (1) and (4) do not apply to a school authority so far as it would be unreasonable for the authority to follow the school improvement guidance or policy statement in a particular case or category of case.

36 Policy statements: requirements and ancillary powers

(1) A policy statement issued under section 35(2) or (3) must set out –

35 (a) how the local authority or governing body (as the case may be) proposes that functions should be exercised differently from the course set out in the school improvement guidance, and

(b) the authority's or the body's reasons for proposing that different course.

(2) An authority or body that has issued a policy statement may –

- (a) issue a revised policy statement;
 - (b) give notice revoking a policy statement.
- (3) A policy statement (or revised statement) must state—
- (a) that it is issued under section 35(2) or (3) (as the case may be), and
 - (b) the date on which it is to take effect.
- (4) The authority or body that issues a policy statement (or revised statement), or gives a notice under subsection (2)(b), must—
- (a) arrange for a statement or notice to be published;
 - (b) send a copy of any statement or notice to the Welsh Ministers.

10 **37 Directions**

- (1) Subsection (2) applies if, in relation to a policy statement issued by a school authority, the Welsh Ministers consider that the authority's alternative policy for the exercise of functions (in whole or in part) is not likely to improve the standard of education provided at a school to which the policy statement relates.
- (2) The Welsh Ministers may direct the school authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the exercise of functions by the authority in accordance with the school improvement guidance issued to the authority in accordance with this Chapter.
- (3) A school authority subject to a direction under this section must comply with it.
- (4) This includes a direction to exercise a power or duty that is contingent upon the opinion of the school authority.
- (5) A direction under this section—
- (a) must be given in writing;
 - (b) may be varied or revoked by a later direction;
 - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

PART 3

SCHOOL ORGANISATION

CHAPTER 1

30 **THE CODE ON SCHOOL ORGANISATION**

38 **School Organisation Code**

- (1) The Welsh Ministers must issue, and may from time to time revise, a code on school organisation ("the Code").
- (2) The Code is to contain provision about the exercise of the functions of the following persons under this Part—

- (a) the Welsh Ministers;
 - (b) local authorities;
 - (c) governing bodies of maintained schools;
 - (d) local determination panels;
 - 5 (e) other persons in connection with proposals made (or to be made) by them under this Part.
- (3) The Code may impose requirements, and may include guidelines setting out aims, objectives and other matters.
- 10 (4) The persons referred to in subsection (2) must, when exercising functions under this Part,—
- (a) act in accordance with any relevant requirements contained in the Code, and
 - (b) have regard to any relevant guidelines contained in it.
- (5) The duty imposed by subsection (4) also applies to a person exercising a function for the purpose of the discharge of functions under this Part by—
- 15 (a) the Welsh Ministers,
- (b) a local authority,
- (c) the governing body of a maintained school,
- (d) a local determination panel, or
- 20 (e) other persons in connection with proposals made (or to be made) by them under this Part.
- (6) The Welsh Ministers must publish the Code for the time being in force on their website.
- (7) The Welsh Ministers may make separate provision (by means of separate codes) in relation to different functions under this Part of the persons mentioned in subsection (2).
- 25 (8) References in this section to “the Code” or to functions under this Part have effect, in relation to a separate code, as references to that code or to functions under this Part to which it relates.

39 Making and approval of School Organisation Code

- (1) Before issuing or revising a code under section 38, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).
- 30 (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the code, the Welsh Ministers must not issue the proposed code in the form of that draft.
- 35 (4) If no such resolution is made before the end of that period—
- (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and

(b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.

(5) The 40 day period –

(a) begins on the day on which the draft is laid before the National Assembly for Wales, and

(b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.

(6) Subsection (3) does not prevent a new draft of a proposed code from being laid before the National Assembly.

(7) References in this section to a proposed code include a proposed revised code.

(8) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part even though the code issued under section 38(1) takes account (to any extent) of any provision made by this Part.

CHAPTER 2

SCHOOL ORGANISATION PROPOSALS

Establishment, alteration and discontinuance of maintained schools

40 Restriction on establishment, alteration and discontinuance of maintained schools

(1) A new community school, voluntary school, community special school or foundation special school may be established in Wales only in accordance with this Part.

(2) No new foundation school may be established in Wales.

(3) A maintained school may be discontinued only in accordance with this Part.

(4) An alteration which is a regulated alteration in relation to the type of school in question may be made to a maintained school only in accordance with this Part.

(5) No alteration may be made to a maintained school that changes the religious character of the school or causes a school to acquire or lose a religious character.

(6) Subsection (3) has effect subject to section 16(5) (power of Welsh Ministers to direct closure of school).

(7) Schedule 2 (which describes regulated alterations) has effect.

41 Proposals to establish mainstream schools

(1) A local authority may make proposals to establish –

(a) a new community school, or

(b) a new maintained nursery school.

(2) Any person may make proposals to establish a new voluntary school.

42 Proposals to alter mainstream schools

- (1) A local authority may make proposals –
- (a) to make a regulated alteration to a community school;
 - (b) with the consent of the Welsh Ministers, to make an alteration described in paragraph 6 of Schedule 2 (opening or closing a school's sixth form) to a voluntary or foundation school;
 - (c) to make an alteration described in paragraph 10, 11, 12 or 13 of Schedule 2 (increasing and reducing capacity) to a voluntary or foundation school if that school does not have a religious character;
 - (d) to make a regulated alteration to a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to make a regulated alteration to the school.

43 Proposals to discontinue mainstream schools

- (1) A local authority may make proposals to discontinue –
- (a) a community, foundation or voluntary school, or
 - (b) a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to discontinue the school.

44 Proposals to establish, alter or discontinue special schools

- (1) A local authority may make proposals –
- (a) to establish a new community or foundation special school,
 - (b) to make a regulated alteration to such a school, or
 - (c) to discontinue such a school.
- (2) The governing body of a foundation special school may make proposals –
- (a) to make a regulated alteration to the school, or
 - (b) to discontinue the school.

*Changes of category***45 Proposals to change a school's category**

- (1) The governing body of a community school may make proposals for the school to become a voluntary aided school or a voluntary controlled school.
- (2) The governing body of a voluntary aided school may make proposals for the school to become a community school or a voluntary controlled school.
- (3) The governing body of a voluntary controlled school may make proposals for the school to become a community school or a voluntary aided school.
- (4) The governing body of a foundation school may make proposals for the school to become a community school, a voluntary aided school or a voluntary controlled school.

- (5) A local authority may make proposals for a community special school to become a foundation special school.
- (6) The governing body of a community special school or a foundation special school may make proposals for the school to become a foundation special school or a community special school.

46 Requirement for proposals for voluntary aided school to change category

If at any time the governing body of a voluntary aided school is unable or unwilling to carry out its obligations under Schedule 3 to the School Standards and Framework Act 1998 (funding of voluntary aided schools), it must make proposals under section 45 for the school to become a voluntary controlled school.

47 Restrictions on changing category of school

- (1) A maintained school within one of the categories set out in section 20(1) of the School Standards and Framework Act 1998 may become a school within another of those categories (except a foundation school) only in accordance with this Part.
- (2) A school may not change category to become a voluntary aided school unless the governing body of the school satisfies the Welsh Ministers that it will be able to carry out its obligations under Schedule 3 to the School Standards and Framework Act 1998 (funding of voluntary aided schools) for a period of at least five years following the date on which it is proposed that the change of category is to take place.
- (3) A voluntary or foundation school may not become a community school and a foundation special school may not become a community special school unless any transfer agreement and transfer of rights and liabilities agreement required by Part 3 of Schedule 5 has been entered into.

48 Effect of change of category

- (1) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising or requiring any change in the character of the school (including, in particular, any religious character of the school).
- (2) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising a school to establish, join or leave a foundation body.

Publication, consultation, and objections

49 Publication and consultation

- (1) A proposer must publish proposals made under this Chapter in accordance with the Code.
- (2) Before publishing proposals made under this Chapter, a proposer must consult on its proposals in accordance with the Code.
- (3) The requirement to consult does not apply to proposals to discontinue a school which is a small school (see section 57).

- (4) Before the end of 7 days beginning with the day on which they were published, the proposer must send copies of the published proposals to –
- (a) the Welsh Ministers, and
 - (b) the local authority (if it is not the proposer) that maintains, or that it is proposed will maintain, the school to which the proposals relate.
- (5) The proposer must publish a report on the consultation it has carried out in accordance with the Code.

50 Objections

- (1) Any person may object to proposals published under section 49.
- (2) Objections must be sent in writing to the proposer before the end of 28 days beginning with the day on which the proposals were published (“the objection period”).
- (3) The proposer must publish a summary of all objections made in accordance with subsection (2) (and not withdrawn) and its response to those objections before the end of 28 days beginning with end of the objection period.

51 Categories of objectors

- (1) The following are category 1 objectors for the purposes of this Chapter –
- (a) a local authority;
 - (b) if the school to which the proposals relate is, or is intended to be, a school which has a religious character, the appropriate religious body;
 - (c) a local authority in England whose area is adjacent to the area of the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.
- (2) The following are category 2 objectors for the purposes of this Chapter –
- (a) the governing body of the school to which the proposals relate;
 - (b) the governing body of a maintained school which the proposer considers is likely to be affected by the proposals;
 - (c) the school council of the school to which the proposals relate;
 - (d) the school council of a maintained school which the proposer considers is likely to be affected by the proposals;
 - (e) a member of the National Assembly for Wales who is the member for the constituency or one of the members for the electoral region where the school to which the proposals relate is, or will be, located, or who represents in the National Assembly a constituency or electoral region whose residents the proposer considers are likely to be affected by the proposals;
 - (f) a member of Parliament who is the member for the constituency where the school to which the proposals relate is, or will be, located or whose constituents the proposer considers are likely to be affected by the proposals;

- (g) in the case of proposals relating to a school that provides secondary education, an institution within the further education sector in Wales which the proposer considers is likely to be affected by the proposals;
- (h) the appropriate religious body for any other school which has a religious character and which the proposer considers is likely to be affected by the proposals.

(3) The following are category 3 objectors for the purposes of this Chapter –

- (a) a member of the local authority for the area where the school to which the proposals relate is, or will be, located;
- (b) a member of staff of the school to which the proposals relate;
- (c) a member of staff of a maintained school which the proposer considers is likely to be affected by the proposals;
- (d) a child or young person who attends, or who might reasonably wish to attend, the school to which the proposals relate;
- (e) a parent of a child or young person who attends the school to which the proposals relate;
- (f) a parent of a child or young person who might reasonably wish the child or young person to attend the school to which the proposals relate;
- (g) the community council for the area where the school to which the proposals relate is, or will be, located;
- (h) a body representing the interests of members of staff of the school to which the proposals relate;
- (i) an organisation which the proposer considers represents the interests of the children or young persons who attend, or might reasonably wish to attend, the school to which the proposals relate.

Approval and determination of proposals

52 Approval by Welsh Ministers

(1) Proposals published under section 49 require approval under this section if –

- (a) an objection to the proposals has been made in accordance with section 50(2) by a category 1 objector and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period, or
- (b) the proposals affect sixth form education.

(2) Proposals affect sixth form education if –

- (a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or
- (b) they are proposals to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.

(3) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (4) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.

(4) The documents are –

- (a) the report published under section 49(5),
- (b) the published proposals,
- (c) any objections made in accordance with section 50(2) (and not withdrawn), and
- (d) where objections have been so made (and not withdrawn), the response published under section 50(3).

(5) Where proposals require approval under this section, the Welsh Ministers may –

- (a) reject the proposals,
- (b) approve them without modification, or
- (c) approve them with modifications –
 - (i) after obtaining the consent of the proposer to the modifications, and
 - (ii) (except where the governing body or local authority, as the case may be, is the proposer), after consulting the governing body (if any) of the school to which the proposals relate and the local authority that maintains, or that it is proposed will maintain, the school.

(6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.

(7) The Welsh Ministers may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.

(8) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the Welsh Ministers at any time before they are approved under this section.

(9) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section).

53 Approval by local determination panel

(1) Proposals published under section 49 require approval under this section if they do not require approval under section 52 and either –

- (a) an objection to the proposals has been made in accordance with section 50(2) by a category 2 objector and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period, or

- (b) objections to the proposals have been made in accordance with section 50(2) by 10 or more category 3 objectors.
- (2) In calculating whether objections have been made by 10 or more category 3 objectors for the purposes of subsection (1)(b) –
- 5 (a) no account is to be taken of any objection that has been withdrawn in writing before the end of 28 days beginning with the end of the objection period, and
- (b) a single document containing the text of one or more objection purporting to be made by more than one category 3 objector is to count as an objection by one category 3 objector.
- 10 (3) Where proposals require approval under this section, the proposer (if not the local authority) must send a copy of the documents listed in subsection (4) to the relevant local authority before the end of 35 days beginning with the end of the objection period.
- (4) The documents are –
- (a) the report published under section 49(5),
- 15 (b) the published proposals,
- (c) any objections made in accordance with section 50(2) (and not withdrawn), and
- (d) where objections have been so made (and not withdrawn), the response published under section 50(3).
- (5) Where proposals require approval under this section, the relevant local authority must appoint a local determination panel and must provide it with a copy of the documents listed in subsection (4).
- 20 (6) Schedule 3 makes further provision in relation to local determination panels.
- (7) Where proposals require approval under this section, a local determination panel may –
- (a) reject the proposals,
- 25 (b) approve them without modification, or
- (c) approve them with any of the modifications specified in subsection (8) –
- (i) after obtaining the consent of the proposer to the modifications, and
- (ii) (except where the governing body or local authority, as the case may be, is the proposer) after consulting the governing body (if any) of the school to
- 30 which the proposals relate and the relevant local authority.
- (8) The panel may modify –
- (a) the date or dates specified in the published proposals as the date or dates on which the proposals are planned to be implemented;
- (b) the number of pupils specified in the published proposals as the number to be
- 35 admitted to the school (in any age group and in any school year).

- (9) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (10) The Welsh Ministers may, at the request of the proposer, specify a later date by which the event referred to in subsection (9) is to occur.
- 5 (11) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the local determination panel at any time before they are approved under this section.
- (12) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section).
- 10 (13) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.

54 Related proposals

- (1) A proposer must send to the Welsh Ministers proposals (“proposals B”) it has made if –
- 15 (a) it considers that they are related to proposals requiring approval under section 52 (“proposals A”), and
- (b) the proposer has not determined whether to implement proposals B under section 55 before the Welsh Ministers approve or reject proposals A.
- (2) If the Welsh Ministers consider that proposals B are related to proposals A, proposals B are to be treated as requiring approval under section 52.
- 20 (3) A proposer must send to the local determination panel proposals (“proposals D”) it is making if –
- (a) it considers that they are related to proposals requiring approval under section 53 (“proposals C”), and
- 25 (b) the proposer has not determined whether to implement proposals D under section 55 before the panel approves or rejects proposals C.
- (4) If the local determination panel considers that proposals D are related to proposals C, proposals D are to be treated as requiring approval under section 53.
- (5) The Welsh Ministers may require any other proposals to be treated as requiring approval under section 52 if –
- 30 (a) they consider that they are related to proposals requiring their approval under section 52, and
- (b) the proposer has not determined whether to implement them under section 55 before the Welsh Ministers approve or reject the proposals requiring approval.
- 35 (6) A local determination panel may require any other proposals to be treated as requiring approval under section 53 if –
- (a) it considers that they are related to proposals requiring its approval under section 53, and

(b) the proposer has not determined whether to implement them under section 55 before the panel approves or rejects the proposals requiring approval.

(7) This section does not apply to proposals referred to a local inquiry under section 62 (local inquiry into proposals for the rationalisation of school places).

5 **55 Determination**

(1) Where any proposals published under section 49 do not require approval under section 52 or 53, the proposer must determine whether the proposals should be implemented.

10 (2) If a determination under subsection (1) is not made before the end of 16 weeks beginning with the end of the objection period, the proposer is to be taken to have withdrawn the proposals.

(3) Before the end of 7 days beginning with the day of its determination under subsection (1), the proposer must notify the following of the determination –

(a) the Welsh Ministers;

15 (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;

(c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.

56 Implementation

(1) This section applies to –

20 (a) proposals approved under section 52 or 53, or

(b) proposals which the proposer has determined under section 55 to implement.

(2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were approved or determined to be implemented –

25 (a) in the case of proposals made under section 41, 42, 43 or 44 (establishment, alteration or discontinuance of schools), in accordance with Schedule 4;

(b) in the case of proposals made under section 45 (change of category), in accordance with Schedule 5.

30 (3) The proposer may (subject to subsection (6)) determine to delay implementation for a period of up to three years from the date or dates specified in the proposals (as approved or determined) as the date or dates on which they are to be implemented, if it is satisfied –

(a) that implementation of the proposals on that date or those dates would be unreasonably difficult, or

35 (b) that circumstances have so altered since the proposals were approved under section 52 or 53 or determined under section 55, that implementation of the proposals on that date or those dates would be inappropriate.

- (4) In the case of proposals to discontinue a school made under section 43 or 44, the proposer may (subject to subsection (6)) determine to bring forward implementation by a period of up to 13 weeks from the date or dates specified in the proposals (as approved or determined) as the date or dates on which they are to be implemented.
- 5 (5) The proposer may (subject to subsection (6)) determine that subsection (2) does not apply to proposals if it is satisfied –
- (a) that implementation of the proposals would be unreasonably difficult, or
 - (b) that circumstances have so altered since the proposals were approved under section 52 or 53 or determined under section 55, that implementation of the proposals would be inappropriate.
- 10 (6) In the case of proposals which have been approved under section 52 or 53, the proposer may only make a determination under subsection (3), (4) or (5) with the agreement of the Welsh Ministers.
- 15 (7) Before the end of 7 days beginning with the day of the determination, the proposer must notify the following of any determination it makes under subsection (3), (4) or (5) –
- (a) the Welsh Ministers;
 - (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain the school to which the proposals relate;
 - (c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.
- 20 (8) Where, by virtue of subsection (5), subsection (2) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected under section 52(5)(a) or 53(7)(a) or as if the proposer had determined under section 55 not to implement them.

57 Interpretation of Chapter 2

- 25 (1) In this Chapter –
- “appropriate religious body” (“*corff crefyddol priodol*”) is –
- (a) in the case of a Church in Wales school or a Roman Catholic Church school, or proposed such school, the appropriate diocesan authority, and
 - (b) in the case of other schools or proposed schools, the body representing the religion or religious denomination stated, or that it is intended to be stated, in relation to the school in an order under section 69(3) of the School Standards and Framework Act 1998;
- 30

“category 1 objector” (*“gwrthwynebydd categori 1”*) has the meaning given by section 51(1);

“category 2 objector” (*“gwrthwynebydd categori 2”*) has the meaning given by section 51(2);

5 “category 3 objector” (*“gwrthwynebydd categori 3”*) has the meaning given by section 51(3);

“the Code” (*“y Cod”*) means the code on school organisation issued under section 38(1);

“objection period” (*“cyfnod gwrthwynebu”*) has the meaning given by section 50(2);

10 “proposer” (*“cynigydd”*), in relation to proposals made under section 41, 42, 43, 44 or 45, is the local authority, the governing body or other person who has made the proposals;

“regulated alteration” (*“newid rheoleiddiedig”*) means an alteration described in Schedule 2;

15 “small school” (*“ysgol fach”*) means a school with fewer than 10 registered pupils on the third Tuesday in the January immediately preceding the date on which the proposals are made.

- (2) A reference in this Part to a local determination panel in relation to a local authority, a school maintained or proposed to be maintained by a local authority or any proposals relating to such a school, is a reference to the local determination panel covering the authority’s area.
- (3) The Welsh Ministers may by order amend the definition of “small school” in subsection (1) so as to substitute a reference to a different date for the reference to the date for the time being specified.
- 20

CHAPTER 3**RATIONALISATION OF SCHOOL PLACES***Directions to make proposals for rationalisation of school places***58 Directions to make proposals to remedy excessive or insufficient provision**

- 5 (1) This section applies where the Welsh Ministers are of the opinion that there is excessive provision, or that there is, or there is likely to be, insufficient provision, for primary or secondary education in maintained schools –
- (a) in the area of a local authority, or
 - (b) in a part of such an area.
- 10 (2) The Welsh Ministers may, by order –
- (a) direct the local authority to exercise its powers to make proposals to establish, alter or discontinue schools, and
 - (b) direct the governing body of a foundation, voluntary or foundation special school maintained by the authority to exercise its powers to make proposals to alter its
- 15 (3) An order under subsection (2) must –
- (a) require the proposals to be published no later than the date specified in the order,
 - (b) require the proposals, in giving effect to the direction, to apply any principles specified in the order, and
 - (c) where the Welsh Ministers are of the opinion that there is, or there is likely to be, insufficient provision, specify the additional number of pupils to be
- 20 (4) An order under subsection (2)(a) may not require the proposals to relate to a named school.

25 59 Further provision about proposals made after an order under section 58(2)

- (1) Proposals made in accordance with an order under section 58(2) may not be withdrawn without the consent of the Welsh Ministers.
- (2) The Welsh Ministers may give consent for the purposes of subsection (1) subject to conditions.
- 30 (3) The local authority must reimburse expenditure reasonably incurred by a governing body of a school maintained by it in making proposals in accordance with an order under section 58(2).
- (4) Despite anything in Part 1 of Schedule 4 (responsibility for implementation of statutory proposals), the local authority must meet the cost of implementing proposals made by a
- 35 governing body of a school maintained by the authority in accordance with an order under section 58(2) which have been approved or determined to be implemented.

*Proposals by Welsh Ministers to rationalise school places***60 Making and publication of proposals by Welsh Ministers**

- (1) This section applies where –
- (a) the Welsh Ministers have made an order under section 58(2), and
 - (b) either –
 - (i) proposals have been published in accordance with the order, or
 - (ii) the time allowed under the order for the publication of the proposals has expired.
- (2) The Welsh Ministers may make any proposals that could have been made in accordance with the order.
- (3) The proposals must be published in accordance with the code issued under section 38(1) for the time being in force.
- (4) The Welsh Ministers must send a copy of the proposals –
- (a) to the local authority for the area, and
 - (b) to the governing body of each school to which the proposals relate.

*Procedure for dealing with proposals under section 60***61 Objections**

- (1) Any person may object to proposals published under section 60.
- (2) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

62 Local inquiry into proposals

- (1) This section applies where the Welsh Ministers have made proposals under section 60 (other than proposals made by virtue of section 63(1)) which they have not withdrawn.
- (2) If objections have been made in accordance with section 61(2), then, unless all objections so made have been withdrawn in writing within the 28 days referred to in that section, the Welsh Ministers must cause a local inquiry to be held.
- (3) The purpose of the local inquiry is to consider the Welsh Ministers' proposals, any other proposals the Welsh Ministers refer to the inquiry and the objections mentioned in subsection (2).
- (4) Proposals referred to a local inquiry under this section are to be determined under section 63, and sections 52, 53, 55, 71 and do not apply to them.
- (5) Where a local inquiry is required to be held, the Welsh Ministers must refer the proposals listed in subsection (6) to the inquiry if the proposals –
- (a) have not been determined before the proceedings on the inquiry begin, and

(b) appear to the Welsh Ministers to be related to the proposals made under section 60 in respect of which the inquiry is to be held.

(6) The proposals to be referred are –

(a) any other proposals published under section 60 in relation to the area of the local authority (and not withdrawn);

(b) any proposals made by that authority in the exercise of their powers to make proposals to establish, alter or discontinue schools (and not withdrawn);

(c) any proposals made by the governing body of a foundation, voluntary or foundation special school in the area in the exercise of its powers to make proposals to alter its school (and not withdrawn); and

(d) any proposals made under section 69 or 72 (and not withdrawn).

(7) If, before the proceedings on the inquiry begin, the Welsh Ministers form the opinion that any proposals should be implemented, subsection (5) does not require them to refer those proposals to the inquiry unless they form a different opinion before –

(a) the proceedings on the inquiry are concluded, or

(b) (if earlier) the proposals are determined.

(8) It is not open to the inquiry to question the principles specified in the order under section 58(2).

(9) References in this section to the determination of proposals are to –

(a) a determination whether or not to adopt or approve the proposals under section 52, 53, 63, 71 or ;

(b) a determination whether or not to implement the proposals under section 55.

63 Adoption of proposals

(1) Where a local inquiry has been held, the Welsh Ministers may, after considering the report of the person appointed to hold the inquiry, do one or more of the following –

(a) adopt, with or without modifications, or determine not to adopt any of the proposals made by the Welsh Ministers (including proposals made by them referred under section 62(5)) and considered by the inquiry;

(b) approve, with or without modifications, or reject any other proposals which were referred to the inquiry under section 62(5);

(c) make further proposals under section 60.

(2) If the Welsh Ministers make further proposals under section 60 in accordance with subsection (1)(c), the requirement in section 62(2) to cause a local inquiry to be held does not apply.

- (3) Where the Welsh Ministers have published proposals under section 60 which are not required to be considered by a local inquiry, they may, after considering any objections made in accordance with section 61(2) (and not withdrawn) –
- (a) adopt the proposals with or without modifications, or
 - (b) determine not to adopt the proposals.
- (4) The adoption or approval of proposals may be expressed to take effect only if an event specified in the adoption or approval occurs by a date so specified.

64 Implementation of proposals

- (1) Proposals adopted or approved by the Welsh Ministers under section 63 have effect as if they had been approved by the Welsh Ministers under section 52 after having been made –
- (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or
 - (b) in the case of proposals to alter a foundation, voluntary or foundation special school, by the governing body under its powers to make proposals to alter its school.
- (2) Despite anything in Part 1 of Schedule 4 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals adopted or approved under section 63 which have effect as mentioned in subsection (1)(b).

CHAPTER 4

REGIONAL PROVISION FOR SPECIAL EDUCATIONAL NEEDS

65 Meaning of “regional provision” and “special education functions”

In this Chapter –

“regional provision” (*“darpariaeth ranbarthol”*) means –

- (a) provision of education for children belonging to the areas of different local authorities, at a school maintained by one of those authorities, or
- (b) provision made by two or more local authorities for goods or services to be supplied by one of the authorities –
 - (i) to the other or others, or
 - (ii) to one or more governing bodies of schools maintained by the other authority or authorities;

“special education functions” (*“swyddogaethau addysg arbennig”*) means functions under Part 4 of the Education Act 1996 (special educational needs).

66 Direction to consider making regional provision

- 5
- (1) The Welsh Ministers may direct local authorities to consider whether they (or any of them) would be able to carry out their special education functions, in respect of children with the special educational needs specified in the direction, more efficiently or effectively if regional provision were made.
 - (2) The authorities to whom a direction is given must report their conclusions to the Welsh Ministers no later than the time specified in the direction.
 - (3) A direction under this section may be given to local authorities generally or to one or more authorities specified in the direction.

10

67 Directions to make proposals to secure regional provision

- 15
- (1) This section applies where the Welsh Ministers are of the opinion that two or more local authorities would be able to carry out their special education functions, in respect of children falling within a particular description, more effectively or efficiently if regional provision were made in relation to the areas of those authorities.
 - (2) The Welsh Ministers may, by order, give one or more of the directions specified in subsection (3) for the purpose of securing that regional provision is made in relation to the description of children from the areas specified in the order.
 - (3) The directions are –
 - 20 (a) that a local authority exercise its powers to make proposals to establish, alter or discontinue schools;
 - (b) that the governing body of a foundation, voluntary or foundation special school exercise its powers to make proposals to alter its school;
 - (c) that two or more local authorities make arrangements under which –
 - 25 (i) provision for education is made by one of the authorities in respect of persons from the area (or areas) of the other authority (or authorities), and
 - (ii) provision is made for determining the payments to be made under the arrangements in respect of the provision of that education;
 - (d) that two or more local authorities make arrangements that provide for one of those authorities to supply to the other (or others) goods or services to be specified in the arrangements on terms (including terms as to payment) to be so specified;
 - 30 (e) that a local authority and the governing bodies of one or more foundation, voluntary or foundation special schools make arrangements that provide for the authority to supply to the governing bodies goods or services to be specified in the arrangements, on terms (including terms as to payment) to be so specified.

(4) Where an order contains a direction under subsection (3)(c) and a direction under subsection (3)(a) or (3)(b), the payments to which subsection (3)(c) refers may include an amount in respect of the costs connected with the establishment, alteration or discontinuance of the school in question.

(5) An order containing a direction under subsection (3)(a) or (3)(b) –

(a) must require the proposals in question to be published no later than the date specified in the order, and

(b) must require the body making the proposals to send a copy of the published proposals, together with other information (of a kind specified in the order) in connection with those proposals to the Welsh Ministers.

68 Further provision about proposals made after an order under section 67

(1) Proposals made in accordance with an order under section 67 may not be withdrawn without the consent of the Welsh Ministers.

(2) The Welsh Ministers may give consent for the purposes of subsection (1) subject to conditions.

(3) The local authority must reimburse expenditure reasonably incurred by the governing body of a school maintained by it in making proposals in accordance with an order under section 67.

(4) Despite anything in Part 1 of Schedule 4 (responsibility for implementation of statutory proposals), the local authority must meet the cost of implementing proposals made by the governing body of a school maintained by the authority in accordance with an order under section 67 which have been approved or determined to be implemented.

69 Proposals by Welsh Ministers

(1) This section applies where –

(a) the Welsh Ministers have made an order under section 67, and

(b) either –

(i) proposals have been published in accordance with the order, or

(ii) the time allowed under the order for the publication of the proposals has expired.

(2) The Welsh Ministers may make any proposals that could have been made in accordance with the order.

(3) The proposals must be published in accordance with the code issued under section 38(1) for the time being in force.

(4) The Welsh Ministers must send a copy of the proposals to –

(a) local authorities whose areas are affected by the proposals, and

(b) the governing body of each school to which the proposals relate.

70 Objections

(1) Any person may object to proposals published under section 69.

- (2) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

71 Adoption of proposals

- 5 (1) The Welsh Ministers may, after considering any objections made in accordance with section 70 (and not withdrawn) –
- (a) adopt the proposals with or without modifications, or
 - (b) determine not to adopt the proposals.
- (2) The adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified.
- 10 (3) Proposals adopted by the Welsh Ministers have effect as if they had been approved by the Welsh Ministers under section 52 after having been made –
- (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or
 - (b) in the case of proposals to alter a foundation, voluntary or foundation special
- 15 school, by the governing body under its powers to make proposals to alter its school.
- (4) Despite anything in Part 1 of Schedule 4 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals adopted under subsection (1) which have effect as mentioned in
- 20 subsection (3)(b).

CHAPTER 5

PROPOSALS FOR RESTRUCTURING SIXTH FORM EDUCATION

Making and determining proposals

72 Welsh Ministers' powers to restructure sixth form education

- 25 (1) The Welsh Ministers may make proposals under this section for –
- (a) the establishment by a local authority of one or more new community, community special or foundation special schools to provide secondary education suitable to the requirements of sixth formers (and no other secondary education);
 - (b) an alteration described in paragraph 6 of Schedule 2 to one or more maintained
- 30 schools;
- (c) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of sixth formers (and no other secondary education).
- (2) A "sixth former" is a person who is above compulsory school age but below the age of 19.

73 Consultation, publication and objections

- (1) Before publishing proposals made under section 72, the Welsh Ministers must consult on the proposals in accordance with the code issued under section 38(1) for the time being in force.
- (2) The Welsh Ministers must publish proposals made under section 72 in accordance with the code issued under section 38(1) for the time being in force.
- (3) Any person may object to the proposals.
- (4) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

74 Determination by Welsh Ministers

- (1) After the end of the 28 days referred to in section 73(4), the Welsh Ministers must determine whether to—
 - (a) adopt the proposals, with or without modifications, or
 - (b) withdraw the proposals.
- (2) In making a determination under subsection (1), the Welsh Ministers must have regard to any objections made in accordance with section 73(4) and not withdrawn.
- (3) Before adopting proposals subject to modifications, the Welsh Ministers must consult such persons as they consider appropriate.
- (4) The adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified.
- (5) If the event does not occur by the specified date the Welsh Ministers must reconsider their determination under subsection (1).
- (6) The Welsh Ministers may withdraw their proposals at any time before they make a determination under subsection (1).

*Implementation of proposals for restructuring sixth form education***75 Form of implementation**

- (1) This section applies to proposals which have been adopted by the Welsh Ministers under section 74.
- (2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were adopted.
- (3) At the request of a specified body, the Welsh Ministers—
 - (a) may modify proposals adopted under section 74 after consulting the specified bodies, and
 - (b) where the adoption of proposals was expressed to take effect subject to the occurrence of a specified event, may specify a later date by which that event must occur.
- (4) The Welsh Ministers may determine that subsection (2) does not apply to the proposals if they are satisfied, after consulting the specified bodies—

- (a) that implementation of the proposals would be unreasonably difficult, or
- (b) that circumstances have so altered since the proposals were adopted that implementation of the proposals would be inappropriate.

(5) Each of the following is a “specified body” for the purposes of subsections (3) and (4) –

- (a) the governing body of the school to which the proposals relate;
- (b) in the case of a proposal to establish a new school, the temporary governing body constituted in accordance with arrangements made under section 34 of the Education Act 2002;
- (c) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;
- (d) where the school to which the proposals relate is a community or foundation special school each local authority which maintains a statement of special educational needs under Part 4 of the Education Act 1996 in respect of a registered pupil at the school.

76 Responsibility for implementation

- (1) Proposals to establish a school must be implemented by the local authority that it is proposed will maintain the school.
- (2) Proposals to make an alteration described in paragraph 6 of Schedule 2 must be implemented –
 - (a) in the case of proposals relating to a community school, by the local authority that maintains the school;
 - (b) in the case of proposals relating to a voluntary aided school –
 - (i) so far as relating to the provision of any relevant premises, by the local authority that maintains the school, and
 - (ii) otherwise, by the governing body of the school;
 - (c) in the case of proposals relating to any other school, by the local authority that maintains the school and the governing body of the school to the extent (if any) as the proposals provide for each of them to do so.
- (3) In subsection (2) “relevant premises” means –
 - (a) playing fields, or
 - (b) buildings which are to form part of the school premises but are not to be school buildings.
- (4) Proposals to discontinue a school must be implemented –
 - (a) in the case of proposals relating to a community or community special school, by the local authority that maintains the school, and
 - (b) in any other case, by the local authority that maintains the school and the governing body of the school.

- (5) If a school changes category from a community or community special school after proposals have been published under section 73 but before they have been implemented, the proposals (to the extent that they have not been implemented) must be implemented by the local authority that maintains the school (despite subsections (2) and (4)).

5 **77 Further provision as to implementation**

- (1) Where a local authority is required by virtue of section 76 to provide a site for a foundation or voluntary controlled school or foundation special school (or a proposed foundation special school), paragraph 7 of Schedule 4 (provision of site and buildings for foundation, voluntary controlled or foundation special school) applies as it applies in the circumstances mentioned in sub-paragraph (1) of that paragraph.
- (2) Paragraph 8 of Schedule 4 (grants in respect of certain expenditure relating to voluntary aided schools) applies in relation to the obligation under section 76(2)(b)(ii) as it applies in relation to the obligations referred to in paragraph 8(1)(a) of that Schedule.
- (3) Paragraph 9 of Schedule 4 (assistance from local authority in respect of voluntary aided schools) applies in relation to obligations imposed on the governing body of a voluntary aided school under section 76(2)(b)(ii) as it applies in relation to the obligations referred to in that paragraph 9, and paragraph 11 of that Schedule (duty on local authority to transfer interest in premises provided under paragraph 9 or 10) applies accordingly.

Supplementary

20 **78 Consequential amendments to inspection reports on sixth form education**

After section 44 of the Education Act 2005 insert—

“Sixth forms requiring significant improvement in Wales

44A Schools with sixth forms

- (1) Sections 44B to 44D apply to a maintained school in Wales which—
- (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and
- (b) provides full-time education suitable to the requirements of pupils of compulsory school age.
- (2) For the purposes of those sections a school requires significant improvement in relation to its sixth form if—
- (a) the school is failing to give its pupils over compulsory school age an acceptable standard of education, or

- (b) in relation to its provision for pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform.

5 **44B Inspection reports on schools with sixth forms requiring significant improvement**

- 10 (1) Where a person inspecting a school under Chapter 3 is of the opinion that the school requires significant improvement in relation to its sixth form, the provisions specified in subsection (2) apply (with the necessary modifications) as they apply where the person is of the opinion that special measures are required to be taken in relation to the school.
- 15 (2) Those provisions are section 34(1) to (6) (registered inspectors) or, as the case requires, section 35(1) of that Act (members of the Inspectorate).

44C Report after area inspection on schools with sixth forms requiring significant improvement

- 20 (1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 the Chief Inspector forms the opinion that a school requires significant improvement in relation to its sixth form.
- (2) The Chief Inspector must make a report about the school stating that opinion.
- 25 (3) The report is to be treated for the purposes of this Part as if it were a report of an inspection of the school under section 28.

44D Copies of report and action plan

- 30 (1) This section applies to a report of an inspection under Chapter 3 which—
- (a) states an opinion that a school requires significant improvement in relation to its sixth form, and
- (b) is made by a member of the Inspectorate or states that the Chief Inspector agrees with the opinion.
- (2) The person making the report must send a copy (together with a copy of the summary, if there is one)—
- 35 (a) to the Welsh Ministers, and
- (b) if the person making the report is a member of the Inspectorate, to the appropriate authority for the school.
- (3) The following provisions apply (with the necessary modifications) in relation to a report to which this paragraph applies—
- 40 (a) section 38(2) (additional copies),

- (b) section 38(4) (publication by appropriate authority),
- (c) section 39 (action plan by appropriate authority), and
- (d) where the local authority receives a copy of a report about a school the governing body of which have a delegated budget, section 40(2) and (3) (measures by local authority).

(4) In the application of those provisions –

- (a) a reference to a report and summary is to be taken as a reference to a report and, if there is one, its summary, and
- (b) a reference to a summary alone is to be taken, in a case where there is no summary, as a reference to the report.

44E Report on sixth form schools causing concern after area inspection

(1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 the Chief Inspector forms the opinion that –

- (a) special measures are required to be taken in relation to a sixth form school, or
- (b) that a sixth form school requires significant improvement.

(2) The Chief Inspector must make a report about the school stating that opinion.

(3) The report is to be treated for the purpose of this Part as if it were a report of an inspection of the school under section 28.

(4) A “sixth form school” is a maintained school which –

- (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and
- (b) does not provide full-time education suitable to the requirements of pupils of compulsory school age.

44F Interpretation of sections 44A to 44E

In sections 44A to 44E –

“the appropriate authority”, in relation to a maintained school, means the school’s governing body or, if the school does not have a delegated budget, the local authority;

“the Chief Inspector” means Her Majesty’s Chief Inspector of Education and Training in Wales;

“maintained school” means a community, foundation or voluntary school or a community or foundation special school;

“member of the Inspectorate” means the Chief Inspector, any of Her Majesty’s Inspectors of Education and Training in Wales and any additional inspector appointed under paragraph 2 of Schedule 2.”

CHAPTER 6

MISCELLANEOUS AND SUPPLEMENTAL

79 Federated schools

Proposals made under this Part to establish a new school may relate to the establishment of the school as a federated school (within the meaning given by section 21(1) of the Education (Wales) Measure 2011).

80 Prohibition on local authorities establishing schools in England

No proposals may be made for the establishment of a school in England which is proposed to be maintained by a local authority in Wales.

81 Notice by governing body to discontinue foundation or voluntary school

- (1) The governing body of a foundation or voluntary school may discontinue the school by giving the Welsh Ministers and the local authority that maintains the school at least two years' notice of its intention to do so.
- (2) The Welsh Ministers' consent is required before giving a notice under this section if expenditure has been incurred on the school premises (otherwise than in connection with repairs) –
 - (a) by the Welsh Ministers, or
 - (b) by any local authority.
- (3) The governing body must consult the Welsh Ministers before giving a notice under this section if discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19.
- (4) If, while a notice under this section is in force, the governing body informs the local authority that it is unable or unwilling to carry on the school until the notice expires, the authority –
 - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and
 - (b) is entitled to use the school premises free of charge for that purpose.
- (5) While the school is being so conducted –
 - (a) the authority must keep the school premises in good repair, and
 - (b) any interest in the premises which is held for the purposes of the school is to be treated, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, as vested in the authority.
- (6) Despite subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if it had continued to carry on the school during the unexpired period of the notice.
- (7) A notice under subsection (1) may not be withdrawn without the consent of the local authority.

(8) If a foundation or voluntary school is discontinued under this section, the duty of the local authority to maintain the school as a foundation or voluntary school ceases.

(9) Nothing in section 43 applies in relation to the discontinuance of a foundation or voluntary school under this section.

5 (10) Subsection (11) applies where –

(a) a local authority is conducting a foundation or voluntary school in accordance with subsection (4)(a),

(b) land occupied by the school is held by any trustees for the purposes of the school, and

10 (c) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site.

(11) If the trustees (being entitled to do so) give notice to the governing body which purports to terminate the school's occupation of the land, that notice does not have the effect of terminating the school's occupation of the land until the local authority has ceased to conduct the school in accordance with subsection (4)(a).

15 (12) A copy of the notice must also be given to the Welsh Ministers and the local authority at the time when the notice is given to the governing body.

(13) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(c) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them.

20 (14) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(c) (including a question as to whether subsection (13) applies in any particular circumstances), it is to be determined by the Welsh Ministers.

82 Direction requiring discontinuance of community or foundation special school

30 (1) The Welsh Ministers may direct a local authority to discontinue a community or foundation special school maintained by it on a specified date, if they consider it expedient to do so in the interests of the health, safety or welfare of pupils at the school.

(2) A direction under subsection (1) may require the local authority to notify specified persons or a specified class of persons.

- (3) Before giving a direction under subsection (1), the Welsh Ministers must consult—
- (a) the local authority,
 - (b) any other local authority that would in their opinion be affected by the discontinuance of the school,
 - 5 (c) in the case of a foundation special school which has a foundation, the person who appoints the foundation governors, and
 - (d) any other persons the Welsh Ministers consider appropriate.
- (4) On giving a direction under subsection (1), the Welsh Ministers must give notice in writing of the direction to the governing body of the school and its head teacher.
- 10 (5) A local authority to which a direction is given under subsection (1) must discontinue the school in question on the date specified in the direction.
- (6) Nothing in section 44 applies to the discontinuance of a school under this section.

83 Transitional exemption orders for purposes of Equality Act 2010

- (1) This section applies to proposals for a school to cease to be a single-sex school.
- 15 (2) The making of such proposals under section 60, 69 or 72 is to be treated as an application by the responsible body to the Welsh Ministers for a transitional exemption order under the 2010 Act, and the Welsh Ministers may make such an order accordingly.

- (3) In this section—

“the 2010 Act” (“*Deddf 2010*”) means the Equality Act 2010;

20 “make” (“*gwneud*”), in relation to a transitional exemption order, includes vary or revoke;

“the responsible body” (“*y corff sy’n gyfrifol*”) has the same meaning as in section 85 of the 2010 Act;

25 “single-sex school” (“*ysgol un rhyw*”) has the same meaning as in paragraph 1 of Schedule 11 to the 2010 Act;

“transitional exemption order” (“*gorchymyn esemptio trosiannol*”) has the same meaning as in paragraph 3 of Schedule 11 to the 2010 Act.

84 Interpretation of Part 3

- (1) In this Part—

30 “powers to make proposals to establish, alter or discontinue schools” (“*pwerau i wneud cynigion i sefydlu, newid neu derfynu ysgolion*”) means all or any of the powers of a local authority to make proposals under section section 41, 42, 43 or 44;

35 “powers to make proposals to alter its school” (“*pwerau i wneud cynigion i newid ei ysgol*”), in relation to the governing body of a foundation, voluntary or foundation special school, means its powers to make proposals under section 42(2) or 44(2)(a).

- (2) A reference in this Part to a school's category means one of the categories set out in section 20(1) of the School Standards and Framework Act 1998 (and references to a change of category are to be read accordingly).
- (3) A reference in this Part to the discontinuance of a maintained school is a reference to the local authority ceasing to maintain it.

PART 4

WELSH IN EDUCATION STRATEGIC PLANS

85 Preparation of Welsh in education strategic plans

- (1) A Welsh in education strategic plan is a plan which contains –
- (a) a local authority's proposals on how it will carry out its education functions to –
 - (i) improve the planning of the provision of education through the medium of Welsh ("Welsh medium education") in its area;
 - (ii) improve the standards of Welsh medium education and of the teaching of Welsh in its area;
 - (b) the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
 - (c) a report on the progress made to meet the targets contained in the previous plan or previous revised plan.
- (2) A local authority must prepare a Welsh in education strategic plan for its area.
- (3) A local authority must keep its plan under review, and if necessary, revise it.
- (4) In preparing a Welsh in education strategic plan or revised plan, a local authority must consult –
- (a) its neighbouring local authorities;
 - (b) the head teacher of each school maintained by it;
 - (c) the governing body of each school maintained by it;
 - (d) each institution within the further education sector in its area;
 - (e) the appropriate diocesan authority for any Church in Wales school or Roman Catholic Church school in its area;
 - (f) other prescribed persons.

86 Approval, publication and implementation of Welsh in education strategic plans

- (1) A local authority which has prepared a Welsh in education strategic plan must submit it to the Welsh Ministers for their approval.
- (2) The Welsh Ministers may –
- (a) approve the plan as submitted,
 - (b) approve the plan with modifications, or

(c) reject the plan and prepare another plan which is to be treated as the authority's approved plan.

(3) If a local authority wishes to amend its plan, it must submit a revised plan to the Welsh Ministers.

(4) The Welsh Ministers may approve the revised plan, with or without modifications.

(5) A local authority must publish its approved Welsh in education strategic plan (or revised plan).

(6) A local authority must take all reasonable steps to implement its approved Welsh in education strategic plan (or revised plan).

87 Assessing demand for Welsh medium education

(1) The Welsh Ministers may require a local authority, in accordance with regulations, to carry out an assessment of the demand among parents in its area for Welsh medium education for their children.

(2) Regulations under subsection (1) may (among other things) make provision about when and how to make an assessment.

88 Regulations and guidance

(1) The Welsh Ministers may make regulations about Welsh in education strategic plans.

(2) The regulations may make further provision about the following matters (among other things)–

(a) the form and content of a plan;

(b) the timing and duration of a plan;

(c) keeping a plan under review and its revision;

(d) consultation during the preparation and revision of a plan;

(e) the submission of a plan for approval;

(f) when and how to publish a plan.

(3) The regulations may make provision enabling the preparation of a joint plan by two or more local authorities, and any such regulations may modify any provision of this Part in its application to joint plans.

(4) A local authority must, in the exercise of its functions under this Part, have regard to any guidance issued by the Welsh Ministers.

PART 5**MISCELLANEOUS SCHOOLS FUNCTIONS***Free breakfasts in primary schools***89 Duty to provide free breakfasts for pupils in primary schools**

- 5 (1) A local authority must provide breakfasts on each school day for pupils at a primary school maintained by the authority, if—
- (a) the governing body of the school has asked the authority in writing for breakfasts to be provided, and
- 10 (b) 90 days have passed, beginning with the day following the day on which the request was received.
- (2) The duty in subsection (1) does not apply (or ceases to apply) in relation to a request from a governing body if either of the following paragraphs applies—
- (a) the governing body has asked the authority in writing to stop providing breakfasts;
- 15 (b) it would be unreasonable to provide the breakfasts and the local authority has notified the governing body in writing that as a result—
- (i) it is not going to provide breakfasts, or
- (ii) it is going to stop providing breakfasts.
- (3) If the duty under subsection (1) applies, the local authority must provide breakfast for each pupil who asks the authority for it; for this purpose, the request may be made by or on behalf of the pupil.
- 20 (4) Breakfasts provided by a local authority under this section—
- (a) may take any form the authority thinks fit, subject to any regulations made under section 4 of the Healthy Eating in Schools (Wales) Measure 2009 (requirements for food and drink provided on school premises);
- 25 (b) must be provided free of charge;
- (c) must be available on the school's premises;
- (d) must be available before the start of each school day, except in the case of a community special school where breakfasts may be made available before or at the start of each school day.
- 30 (5) In exercising its functions, a local authority or a governing body of a primary school maintained by a local authority must have regard to any guidance given by the Welsh Ministers about providing breakfasts for pupils.

90 Transitional provision

- (1) Where a local authority that maintains a primary school, or its governing body, is already providing breakfast for pupils of the school at the time section 89 comes into force, that section applies in relation to the school as if—
- 5 (a) a request had been made under that section for provision of breakfasts by the governing body,
- (b) 90 days have passed, beginning with the day following the day on which the request was received, and
- 10 (c) each pupil for whom breakfast is already being provided has made a request to the authority.
- (2) Subsection (3) applies where, before the coming into force of section 89, a request in writing for the provision of breakfasts for pupils has been made by the governing body of the primary school to the local authority that maintains the school, but neither the local authority nor the governing body has been providing breakfast for pupils of the school.
- 15 (3) The request made before the coming into force of section 89 has effect as a request under that section made on the day that the section came into force.

91 Interpretation of sections 89 and 90

In sections 89 and 90—

20 “primary school” (“*ysgol gynradd*”) means a school that provides primary education (whether or not it also provides other kinds of education);

“provide” (“*darparu*”) includes arranging provision;

“pupil” (“*disgybl*”) means a child receiving primary education at the school (whether or not the child is a registered pupil).

Power to charge for meals

92 Amendment to power to charge for school meals etc

- 25 (1) Part 9 of the Education Act 1996 (ancillary functions) is amended as set out in subsections (2) and (3).
- (2) In section 512ZA (power to charge for meals etc)—
- (a) in subsection (1A), omit “in England”;
- 30 (b) omit subsection (2).
- (3) In section 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc)—
- (a) in subsection (3A), omit “in England”;
- (b) omit subsection (4).

*School-based counselling***93 Independent counselling services for school pupils and other children**

- 5 (1) A local authority must secure reasonable provision for a service providing counselling in respect of health, emotional and social needs (an “independent counselling service”) for –
- 10 (a) registered pupils receiving secondary education at –
(i) schools maintained by the authority, and
(ii) other schools in its area;
- (b) other persons belonging to the authority’s area who have attained the age of 11 but not the age of 19;
- 15 (c) registered pupils undertaking their final academic year of primary education at –
(i) schools maintained by the authority, and
(ii) other schools in its area;
- (d) such other persons receiving primary education as the Welsh Ministers may specify in regulations.
- (2) In securing provision of an independent counselling service under this section, a local authority must have regard –
- 20 (a) to the principle that the service is to be independent of –
(i) the governing body or other proprietor of a school at which a person to whom the service is provided is receiving education, and
(ii) the management of a school at which a person to whom the service is provided is receiving education;
- (b) to guidance given by the Welsh Ministers.
- 25 (3) A local authority must secure that an independent counselling service is provided on the site of each school maintained by the authority that provides secondary education (whether or not it also provides other kinds of education).
- (4) A local authority may secure the provision of an independent counselling service at other locations.
- 30 (5) The Welsh Ministers may by regulations require the provision of an independent counselling service at other locations.

94 Information about independent counselling services

- 35 (1) A local authority must comply with a direction given by the Welsh Ministers to the authority –
- (a) to compile information about the independent counselling service it secures under section 93;
- (b) to provide information about that service to the Welsh Ministers.

- (2) A direction under subsection (1) may include instructions to compile or provide information in a way, and at a time, specified in the direction.
- (3) A direction under subsection (1) may not require a local authority –
- (a) to provide information about an identified individual;
 - (b) to provide information in way that, either by itself or in combination with any other information, identifies any individual to whom it relates or enables that individual to be identified.
- (4) If the person providing an independent counselling service is not the local authority –
- (a) the local authority must give the person providing the service a copy of any direction given to the authority under subsection (1), and
 - (b) the person providing the service must compile the information necessary for compliance with the direction, and provide it to the local authority, in a way that does not identify the individuals to whom it relates, or enable them to be identified (either by itself or in combination with other information).
- (5) A direction under this section –
- (a) must be in writing;
 - (b) may be varied or revoked by a later direction;
 - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

Parents' meetings

95 Duty of governing body of maintained schools to hold meetings following petition by parents

- (1) The governing body of a maintained school must hold a meeting (“the meeting”) if it receives a petition from parents of registered pupils at the school requesting a meeting and it is satisfied that each of the following four conditions is satisfied.
- (2) The first condition is that the petition contains the signatures of the required minimum number of parents of registered pupils at the school.
- (3) The required minimum number of parents is the lower of the following –
- (a) the parents of 10% of registered pupils, or
 - (b) the parents of –
 - (i) (in the case of a primary school) 10 registered pupils, or
 - (ii) (in the case of a secondary school) 30 registered pupils.
- (4) For the purpose of subsection (3), the number of registered pupils is to be calculated by reference to the number of registered pupils on the day the petition is received.
- (5) The second condition is that the meeting requested is for the purpose of discussing a matter relating to the school.
- (6) The third condition is that, should a meeting be held, there would be no more than three meetings held under this section during the school year in which the petition is received.

- (7) The fourth condition is that there are enough school days left in the school year for the requirement in subsection (8) to be complied with.
- (8) The meeting must be held before the end of a 20 day period.
- (9) For the purpose of subsection (8), the 20 day period—
- 5 (a) begins on the first day after the day on which the petition is received (subject to subsection (10)), and
- (b) does not include any day which is not a school day.
- (10) If another meeting required to be held under this section as a result of a different petition (“the other meeting”) is held on a day during the 20 day period in subsection (9), but
- 10 before the day on which the meeting is held, the 20 day period begins on the first day after the day on which the other meeting is held.
- (11) The meeting is to be open to—
- (a) all parents of registered pupils at the school,
- (b) the head teacher, and
- 15 (c) other persons invited by the governing body.
- (12) The governing body must, as soon as it reasonably can after receiving a petition that requires a meeting to be held, notify the parents of all registered pupils at the school in writing of the date of the meeting and the matter to be discussed.
- (13) In exercising its functions under this section, the governing body of a maintained school
- 20 must have regard to guidance given by the Welsh Ministers.

96 Repeal of duty to hold annual parents’ meeting

Section 33 of the Education Act 2002 is repealed.

Code of practice on local authority school relations

97 Repeal of provision for code of practice for local authority school relations

25 Section 127 of the School Standards and Framework Act 1998 (code of practice for securing effective relationships between local authorities and maintained schools in Wales) is repealed.

PART 6

GENERAL

30 98 Orders and regulations

- (1) A power of the Welsh Ministers to make an order or regulations under this Act is to be exercised by statutory instrument.
- (2) Subsection (1) does not apply to an order under section 58(2) or 67 or under paragraph 34(1)(b) of Schedule 5.

- (3) A power of the Welsh Ministers to make an order or regulations under this Act includes power –
- (a) to make different provision for different cases or classes of case, different areas or different purposes;
 - (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
 - (c) to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.
- (4) A statutory instrument containing regulations made under this Act or an order under section 57(3) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) A statutory instrument containing an order under paragraph 26 (1) of Schedule 2 must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

99 General interpretation and index of defined expressions

- (1) The provisions of this Act and those of the Education Act 1996 are to be read as if they were all contained in the Education Act 1996.
- (2) But where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of the Education Act 1996.
- (3) In this Act –
- “appropriate diocesan authority” (*“awdurdod esgobaethol priodol”*) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;
 - “appropriate religious body” (*“corff crefyddol priodol”*) is defined in section 57 for the purposes of Chapter 2 of Part 3;
 - “category 1 objector” (*“gwrthwynebydd categori 1”*) is defined in section 51(1) for the purposes of Chapter 2 of Part 3 ;
 - “category 2 objector” (*“gwrthwynebydd categori 2”*) is defined in section 51(2) for the purposes of Chapter 2 of Part 3;
 - “category 3 objector” (*“gwrthwynebydd categori 3”*) is defined in section 51(3) for the purposes of Chapter 2 of Part 3;
 - “Church in Wales school” (*“un o ysgolion yr Eglwys yng Nghymru”*) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;
 - “the Code” (*“y Cod”*) in Chapter 2 of Part 3 means the Code on school organisation issued under section 38(1);
 - “foundation body” (*“corff sefydledig”*) has the same meaning as in section 21(4)(a) of the School Standards and Framework Act 1998;

“foundation governor” (*“llywodraethwr sefydledig”*), in relation to a foundation school, a foundation special school or a voluntary school, means a person appointed as a foundation governor in accordance with regulations under section 19 of the Education Act 2002;

5 “local authority” (*“awdurdod lleol”*) (except in section 51(1)(c)) means a county or county borough council in Wales;

“maintained school” (*“ysgol a gynhelir”*) means a school in Wales which is a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

10 “objection period” (*“cyfnod gwrthwynebu”*) is defined in section 50(2) for the purposes of Chapter 2 of Part 3;

“powers to make proposals to alter its school” (*“pŵerau i wneud cynigion i newid ei ysgol”*) is defined in section 84 for the purposes of Part 3;

15 “powers to make proposals to establish, alter or discontinue schools” (*“pŵerau i wneud cynigion i sefydlu, newid neu derfynu ysgolion”*) is defined in section 84 for the purposes of Part 3;

“prescribed” (*“rhagnodedig”*) means prescribed by regulations;

“primary school” (*“ysgol gynradd”*) is defined in section 91 for the purposes of sections 89 and 90;

20 “proposer” (*“cynigydd”*) is defined in section section 57 for the purposes of Chapter 2 of Part 3;

“provide” (*“darparu”*) is defined in section 91 for the purposes of sections 89 and 90;

“pupil” (*“disgybl”*) is defined in section 91 for the purposes of sections 89 and 90;

25 “regional provision” (*“darpariaeth ranbarthol”*) is defined in section 65 for the purposes of Chapter 4 of Part 3;

“regulated alteration” (*“newid rheoleiddiedig”*) in Chapter 2 of Part 3 means an alteration described in Schedule 2;

“regulations” (*“rheoliadau”*) means regulations made by the Welsh Ministers;

30 “Roman Catholic Church school” (*“un o ysgolion yr Eglwys Gatholig Rufeinig”*) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;

“school authority” (*“awdurdod ysgol”*) is defined in section 32 for the purposes of Chapter 3 of Part 2;

35 “small school” (*“ysgol fach”*) is defined in section 57 for the purposes of Chapter 2 of Part 3;

“special education functions” (*“swyddogaethau addysg arbennig”*) is defined in section 65 for the purposes of Chapter 4 of Part 3.

(4) For references in Part 3 to—

- 40 (a) the discontinuance of a maintained school, see section 84;
 (b) a local determination panel, see section 57(2);

(c) a school's category, see section 84.

- (5) A reference in this Act to a school which has a religious character is to a school which is designated as having such a character by an order under section 69(3) of the School Standards and Framework Act 1998.

5 **100 Minor and consequential amendments**

Schedule 6 contains minor and consequential amendments.

101 Commencement

- (1) The following provisions come into force on the day after the day on which this Act receives Royal Assent –

10 section 1;
this section;
section 102.

- (2) The following provisions come into force at the end of the period of two months beginning on the day on which this Act receives Royal Assent –

15 Chapter 3 of Part 2;
section 92;
paragraphs 25, 28(1) and (3), 29 and 30 of Part 3 of Schedule 6 (and section 100 in so far as relating to those paragraphs).

- (3) The remaining provisions of this Act are to come into force on a day appointed by the
20 Welsh Ministers in an order.

102 Short title and inclusion as one of the Education Acts

- (1) The short title of this Act is the School Standards and Organisation (Wales) Act 2013.
(2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

SCHEDULE 1
(introduced by section 18)

GOVERNING BODIES CONSISTING OF INTERIM EXECUTIVE MEMBERS

Interpretation of Schedule

- 5 1 (1) In this Schedule—
- “the appropriate authority” (“*yr awdurdod priodol*”) means—
- (a) where this Schedule applies by virtue of a notice under section 7, the local authority that gave the notice, and
- (b) where this Schedule applies by virtue of a notice under section 14, the
10 Welsh Ministers;
- “existing governors” (“*llywodraethwyr presennol*”), in relation to a school in respect of which a notice under section 7 or 14 has been given, means the governors who hold office immediately before the governing body becomes constituted in accordance with this Schedule;
- “the interim period” (“*y cyfnod interim*”), in relation to a school in respect of which
15 a notice under section 7 or 14 has been given, means the period during which the governing body is constituted in accordance with this Schedule;
- “a normally constituted governing body” (“*corff llywodraethu a gyfansoddwyd yn normal*”) means a governing body constituted in accordance with regulations made by virtue of section 19 of the Education Act 2002 (governing bodies).
- 20 (2) In this Schedule any reference to the discontinuance of a maintained school is a reference to the local authority ceasing to maintain it.

Governing body to consist of members appointed by appropriate authority

- 25 2 (1) The governing body of the school is to consist of members appointed by the appropriate authority, instead of being constituted in accordance with regulations made by virtue of section 19 of the Education Act 2002.
- (2) In the following provisions of this Schedule—
- (a) the governing body as constituted in accordance with this Schedule is referred to as “the interim executive board”, and
- (b) the members of the governing body as so constituted are referred to as “interim executive members”.
- 30

Effect of notice under section 7 or 14

- 3 (1) On the date specified in the notice under section 7 or 14, the existing governors vacate office.
- 35 (2) Sub-paragraph (1) does not prevent the appointment of an existing governor as an interim executive member.

- (3) During the interim period, any reference in any provision contained in, or made under, the Education Acts to a governor or foundation governor of a school has effect, in relation to the school, as a reference to an interim executive member.
- (4) During the interim period, section 83 of the School Standards and Framework Act 1998 (modification of provisions making governors of foundation or voluntary school ex officio trustees) has effect in relation to the school with the substitution for paragraphs (a) to (c) of a reference to the interim executive members.

Number of interim executive members

- 4 (1) The number of interim executive members must not be less than two.
- 10 (2) The initial appointment of interim executive members must be made so as to take effect on the date specified in the notice under section 7 or 14.
- (3) The appropriate authority may appoint further interim executive members at any time during the interim period.

Terms of appointment of interim executive members

- 15 5 (1) Every appointment of an interim executive member must be made by an instrument in writing setting out the terms of the appointment.
- (2) An interim executive member –
- (a) holds office in accordance with the terms of the appointment and subject to paragraph 16, and
- 20 (b) may at any time be removed from office by the appropriate authority for incapacity or misbehaviour.
- (3) The terms of appointment of an interim executive member may provide for the appointment to be terminable by the appropriate authority by notice.

Duty of appropriate authority to inform other persons

- 25 6 (1) The appropriate authority must give a copy of the notice under section 7 or 14 and of every instrument of appointment of an interim executive member –
- (a) to every interim executive member,
- (b) to every existing governor of the school,
- (c) where the local authority is the appropriate authority, to the Welsh Ministers,
- 30 (d) where the Welsh Ministers are the appropriate authority, to the local authority,
- (e) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, to the appropriate diocesan authority, and
- (f) in the case of any other foundation or voluntary school, to the person who appoints the foundation governors.
- 35 (2) A failure to comply with sub-paragraph (1) does not invalidate the notice or appointment.

Power to specify duration of interim period

7 The appropriate authority may specify the duration of the interim period in the notice under section 7 or 14.

Chair

5 8 The appropriate authority may nominate one of the interim executive members to be chair of the interim executive board.

Remuneration and allowances

9 The appropriate authority may pay to any interim executive member such remuneration and allowances as the appropriate authority may determine, subject to any regulations
10 made under paragraph 13(2).

Duty of interim executive board

- 10 (1) During the interim period, the interim executive board must conduct the school so as to secure, so far as is practicable to do so, the provision of a sound basis for future improvement in the conduct of the school.
- 15 (2) Sub-paragraph (1) does not affect the other duties of the interim executive board as governing body.

Proceedings of interim executive board

- 11 (1) The interim executive board may determine its own procedure.
- 20 (2) The interim executive board may make such arrangements as it thinks fit for the discharge of its functions by any other person.
- (3) This paragraph is subject to regulations made under paragraph 13(2).

Effect on suspension of delegated budget

- 12 (1) If immediately before the date specified in a notice under section 7 or 14 the school does
25 not have a delegated budget, the suspension of the governing body's right to a delegated budget is by virtue of this sub-paragraph revoked with effect from that date.
- (2) If a notice under paragraph 1 of Schedule 15 to the School Standards and Framework Act 1998 (suspension of delegated budget for mismanagement etc) has been given to the governing body before the date specified in a notice under section 7 or 14 but has not yet taken effect, the notice ceases to have effect on that date.
- 30 (3) During the interim period, the local authority may not exercise the power conferred by section 8 (power to suspend right to delegated budget).
- (4) Sub-paragraph (1) is to be construed in accordance with section 49(7) of the School Standards and Framework Act 1998.

Exclusion of certain statutory provisions

- 13 (1) Regulations made under section 19(2) or (3) of the Education Act 2002 (governing bodies) do not apply in relation to the interim executive board.
- 5 (2) But regulations made under section 19(3)(f), (g), (i), (j), (k) or (l) of the Education Act 2002 (other than regulations under section 19(3)(l) relating to the constitution of governing bodies) may be applied in relation to the board (with or without modifications) by regulations.
- (3) The instrument of government of the school does not have effect in relation to the interim executive board in so far as it relates to the constitution of the governing body.
- 10 (4) During the interim period –
- (a) the local authority may not exercise any power conferred by section 6 (power to appoint additional governors), and
 - (b) the Welsh Ministers may not exercise any power conferred by section 13 (power to appoint additional governors).

15 Closure of school

- 14 (1) At any time during the interim period, the interim executive board may, if it thinks fit, make a report to the local authority and the Welsh Ministers recommending that the school be discontinued, and stating the reasons for that recommendation.
- (2) The interim executive board may not –
- 20 (a) publish under section 43 or 44 proposals to discontinue the school, or
- (b) serve notice under section 81.
- (3) Sub-paragraph (4) applies if during the interim period –
- (a) the Welsh Ministers give a direction under section 16 or 82 in relation to the school, or
- 25 (b) the local authority determine to discontinue the school.
- (4) The interim period is to continue until the discontinuance date, even where it would otherwise end before that date.
- (5) In this paragraph “the discontinuance date” means one of the following (as the case may be) –
- 30 (a) the date on which proposals for discontinuing the school are implemented under Part 1 of Schedule 4;
- (b) the date on which the school is discontinued under section 81;
- (c) the date specified in the direction under section 16 or 82(1).

Notice of resumption of government by normally constituted governing body

- 35 15 (1) The following sub-paragraph applies if –
- (a) the notice under section 7 or 14 does not specify the duration of the interim period, and

(b) paragraph 14(4) does not apply.

(2) The appropriate authority may give notice to the persons mentioned in sub-paragraph (3) specifying a date on which the governing body are to become a normally constituted governing body.

5 (3) Those persons are—

(a) every interim executive member,

(b) where the local authority is the appropriate authority, the Welsh Ministers,

(c) where the Welsh Ministers are the appropriate authority, the local authority,

10 (d) in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority, and

(e) in the case of any other foundation or voluntary school, the person who appoints the foundation governors.

Time when interim executive members cease to hold office

16 (1) The interim executive members are to vacate office—

15 (a) in a case where sub-paragraph (4) of paragraph 14 applies, on the discontinuance date within the meaning of that paragraph,

(b) in a case where that sub-paragraph does not apply and the notice under section 7 or 14 specified the duration of the interim period, at the end of the specified period, and

20 (c) in any other case, on the date specified under paragraph 15 (2).

(2) Sub-paragraph (1) does not prevent the termination of the appointment of an interim executive member at any earlier time under paragraph 5(2)(b) or in accordance with the terms of the appointment.

Establishment of normally constituted governing body

25 17 (1) Where interim executive members are to vacate office on the date referred to in paragraph 16(1)(b) or (c), the local authority must make arrangements providing for the constitution of the governing body on and after that date.

(2) The Welsh Ministers may by regulations make provision with respect to the transition from an interim executive board to a normally constituted governing body, and may in connection with that transition—

30 (a) modify any provision made under any of sections 19, 20 and 23 of the Education Act 2002 or by Schedule 1 to that Act,

(b) apply any such provision with or without modifications, and

(c) make provision corresponding to or similar to any such provision.

35 (3) The provision that may be made by virtue of sub-paragraph (2) includes, among other things, provision enabling governors to be elected or appointed, and to exercise functions, before the end of the interim period.

SCHEDULE 2
(Introduced by section 40)

REGULATED ALTERATIONS

PART 1

ALL MAINTAINED SCHOOLS

5

- 1 Paragraphs 2 and 3 describe regulated alterations in relation to community, foundation, voluntary schools, community and foundation special schools, and maintained nursery schools.

Site transfers

10

- 2 The transfer of a school to a new site or sites unless a main entrance of the school on its new site or sites would be within 1.609344 kilometres (one mile) of a main entrance of the school on its current site or sites.

Mixed sex and single sex schools

15

- 3 (1) An alteration to a school so that—
- (a) a school which admitted pupils of one sex only admits pupils of both sexes, or
- (b) a school which admitted pupils of both sexes admits pupils of one sex only.
- (2) For the purposes of this paragraph a school is to be treated as admitting pupils of one sex only if the admission of pupils of the other sex—
- (a) is limited to pupils over compulsory school age; and
- 20 (b) does not exceed 25% of the number of pupils in the age group in question normally at the school.

PART 2

ALL MAINTAINED SCHOOLS OTHER THAN MAINTAINED NURSERY SCHOOLS

25

- 4 Paragraphs 5 to 8 describe regulated alterations in relation to community, foundation and voluntary schools, and community and foundation special schools.

Age range

30

- 5 (1) The alteration by a year or more of the lowest age of pupils for whom education is normally provided at the school.
- (2) The alteration by a year or more of the highest age of pupils for whom education is normally provided at a school where the school, both before and after the alteration, provides education suitable to the requirements of pupils of compulsory school age and does not provide full time education suitable to the requirements of pupils over compulsory school age.

Sixth form provision

- 6 (1) The introduction of the provision of full-time education suitable to the requirements of pupils over compulsory school age at a school which provides full time education suitable to the requirements of pupils of compulsory school age.
- 5 (2) The ending of the provision of full time education suitable to the requirements of pupils over compulsory school age at a school which is to continue to provide full time education suitable to the requirements of pupils of compulsory school age.

Language medium – primary education

- 7 (1) This paragraph applies to—
- 10 (a) primary schools,
- (b) special schools but only in relation to the provision of primary education to pupils at the schools, and
- (c) middle schools but only in relation to the provision of primary education to pupils at the schools.
- 15 (2) An alteration comes within this paragraph if the teaching of a class of pupils in an age group (or groups) at a school falls within a description in an entry in column 1 of table 1 below, and it is proposed to alter the teaching of the corresponding class of pupils in that age group (or those age groups) so that it falls within the description in the corresponding entry in column 2.
- 20 (3) In this paragraph—
- (a) “age group” means—
- (i) a year group of the foundation phase (within the meaning given by section 102 of the Education Act 2002), or
- 25 (ii) a year group of the second key stage (within the meaning given by section 103 of the Education Act 2002);
- (b) a reference to the teaching of a class of pupils does not include a school assembly or other school activities usually conducted with large groups of pupils.

TABLE 1

	1	2
5	At least 20% but no more than 80% of the teaching is conducted through the medium of English	An increase or a decrease of more than 20% in the teaching which is conducted through the medium of Welsh
	At least 20% but no more than 80% of the teaching is conducted through the medium of Welsh	An increase or a decrease of more than 20% in the teaching which is conducted through the medium of English
10	More than 80% of the teaching is conducted through the medium of English, and some teaching is conducted through the medium of Welsh	An increase of more than 10% in the teaching which is conducted through the medium of Welsh
15	More than 80% of the teaching is conducted through the medium of Welsh, and some teaching is conducted through the medium of English	An increase of more than 10% in the teaching which is conducted through the medium of English
	No teaching is conducted through the medium of Welsh	More than 10% of teaching is conducted through the medium of Welsh
20	No teaching is conducted through the medium of English	More than 10% of teaching is conducted through the medium of English
	Some teaching is conducted through the medium of English	No teaching is conducted through the medium of English
	Some teaching is conducted through the medium of Welsh	No teaching is conducted through the medium of Welsh

25 *Language medium -secondary education*

8 (1) This paragraph applies to—

- (a) secondary schools,
- (b) special schools but only in relation to the provision of secondary education to pupils at the schools, and
- 30 (c) middle schools but only in relation to the provision of secondary education to pupils at the schools.

(2) An alteration comes within this paragraph if the teaching of pupils in a year group at a school falls within a description in an entry in column 1 of table 2 below, and it is proposed to alter the teaching of pupils in that year group so that it falls within the description in the corresponding entry in column 2.

35 (3) In this paragraph a “relevant subject” is any subject other than English and Welsh which is taught at the school to pupils in the year group concerned.

TABLE 2

	1	2
5	Five or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils	A decrease by four or more of the relevant subjects taught (wholly or mainly) through the medium of Welsh to any pupils
	Five or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils	A decrease by four or more of the relevant subjects taught (wholly or mainly) through the medium of English to any pupils
10	Every relevant subject is taught (wholly or mainly) through the medium of Welsh to all pupils	Three or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils
	Every relevant subject is taught (wholly or mainly) through the medium of English to all pupils	Three or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils
15	One or more relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils	No relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils
20	One or more relevant subject is taught (wholly or mainly) through the medium of English to any pupils	No relevant subject is taught (wholly or mainly) through the medium of English to any pupils

PART 3

COMMUNITY, FOUNDATION AND VOLUNTARY SCHOOLS

9 Paragraphs 10 to 17 describe regulated alterations in relation to community, foundation and voluntary schools.

25 *Alterations to premises*

10 (1) An enlargement of the premises of the school which would increase the capacity of the school by at least 25% or 200 pupils as compared with the school's capacity on the appropriate date.

30 (2) In determining an increase in capacity for the purpose of sub-paragraph (1), all enlargements that have taken place since the appropriate date are to be taken into account together with the proposed enlargement.

(3) The "appropriate date" is the latest of—

(a) the date falling five years before the date on which it is planned to implement the proposals to make the enlargement;

35 (b) the date when the school first admitted pupils;

(c) the date (or latest date) of implementation of proposals to make an alteration to the school consisting of an enlargement of its premises which proposals were published under –

(i) section 49, 60, 69 or 72, or

(ii) section 28 of the School Standards and Framework Act 1998 or paragraph 5 of Schedule 7 to that Act.

(4) References in this paragraph to an enlargement do not include a temporary enlargement.

(1) An enlargement of the premises of the school which would increase the capacity of the school if the date on which it is planned to implement the proposals to make the enlargement falls within the period described in sub-paragraph (2).

(2) The period is five years beginning with the date (or latest date) of implementation of proposals falling within paragraph 13 (reducing a school's capacity).

(3) "Enlargement" does not include a temporary enlargement.

The making permanent of a temporary enlargement which at the time of its making would have fallen within paragraph 10 (but for the fact that it was temporary).

An alteration of the premises of the school which would reduce the capacity of the school, where the proposed capacity would be lower than the highest number of registered pupils at the school at any time during the two years before the date on which the proposer formed the intention to make the proposed alteration.

For the purposes of paragraphs 10 to 13 –

(a) references to the capacity of a school are to the number of pupils the school can accommodate as determined in accordance with guidance given by the Welsh Ministers, and

(b) a "temporary enlargement" is an enlargement of a school's premises which it is anticipated, at the time of its making, will be in place for fewer than three years.

Special educational needs

The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with special educational needs.

Admission arrangements

The introduction of admission arrangements to which section 101(1) of the School Standards and Framework Act 1998 (pupil banding) applies.

Boarding provision

(1) The introduction or ending of provision for boarding accommodation.

(2) The alteration of provision for boarding accommodation so that the number of pupils for whom such provision is made is increased or decreased by 50 pupils or more or by 50% or more.

PART 4

SPECIAL SCHOOLS

18 Paragraphs 19 to 21 describe regulated alterations in relation to community special schools and foundation special schools.

5 *Increase in pupils*

19 (1) Except where the school is established in a hospital, an increase in the number of pupils for whom the school makes provision which, when taken with all previous increases since the appropriate date, would increase the number of pupils at least by 10% or by the relevant number as compared with the number of pupils on the appropriate date.

10 (2) In this paragraph –

the “appropriate date” (“*dyddiad priodol*”) is the latest of –

(a) 19 January 2012;

(b) the date when the school first admitted pupils;

15 (c) the date (or latest date) of implementation of proposals to make an alteration to the school to increase the number of pupils for whom the school makes provision which proposals were published under –

(i) section 49, 60, 69 or 72, or

(ii) section 31 of the School Standards and Framework Act 1998 or paragraph 5 of Schedule 7 to that Act; and

20 “relevant number” (“*y nifer perthnasol*”) in relation to the number of pupils at a school, is –

(a) where the school provides boarding accommodation only, 5, and

(b) in any other case, 20.

Boarding provision

25 20 The alteration of the provision of boarding accommodation so that the number of pupils for whom such provision is made is increased or decreased by 5 pupils or more.

Special educational needs provision

21 A change in the type of special educational needs for which the school is organised to make provision.

30

PART 5

MAINTAINED NURSERY SCHOOLS

22 Paragraphs 23 to 25 describe regulated alterations in relation to maintained nursery schools.

Teaching space

- 23 (1) An enlargement of the teaching space, other than a temporary enlargement, by 50% or more.
- 5 (2) The making permanent of a temporary enlargement of the teaching space by 50% or more.
- (3) In this paragraph—
- “teaching space” (*“man addysgu”*) means any area used wholly or mainly for the provision of nursery education excluding—
- 10 (a) any area used wholly or mainly for the education of pupils whose educational needs are being assessed under section 323 of the Education Act 1996 and pupils with statements of special educational needs maintained under section 324 of that Act;
- (b) any area constructed, adapted or equipped so as to be unsuitable for general teaching purposes;
- 15 (c) any area constructed, adapted or equipped primarily for the storage of apparatus, equipment or materials used in teaching;
- (d) any part of an area which is required for the movement of pupils through that area and which is used wholly or mainly for that purpose;
- 20 a “temporary enlargement” (*“ehangu dros dro”*) is an enlargement of the teaching space which it is anticipated, at the time of its making, will be in place for fewer than three years.

Special educational needs

- 24 The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with special educational needs.

25 *Language medium*

- 25 (1) In the case of a school at which a group of pupils is taught wholly or mainly through the medium of Welsh, an alteration to the school so that all pupils would be taught wholly or mainly through the medium of English.
- 30 (2) In the case of a school at which a group of pupils is taught wholly or mainly through the medium of English, an alteration to the school so that all pupils would be taught wholly or mainly through the medium of Welsh.

PART 6

SUPPLEMENTARY

Power to amend

- 35 26 (1) The Welsh Ministers may by order amend any provision of this Schedule.
- (2) An order under sub-paragraph (1) may make consequential amendments to any provision of Part 3 of this Act.

SCHEDULE 3
(Introduced by section 53)

LOCAL DETERMINATION PANELS

Interpretation

- 5 1 In this Schedule –
- “the appointing authority” (“*yr awdurdod penodi*”), in relation to a panel, means the local authority that appointed the panel;
- “panel” (“*panel*”) means a local determination panel.

Members

- 10 2 (1) A local determination panel is to consist of five members.
- (2) If a panel is dealing with proposals relating to a school which has a religious character, or in the case of proposals to establish a school, it is intended that it have such a character, the appointing authority must invite the appropriate religious body to nominate a representative to sit as a member of the panel.
- 15 (3) If the appropriate religious body nominates a representative, that representative must be a member of the panel.

Disqualification

- 3 No member of a local authority’s executive may be a member of a panel.
- 4 (1) A person may not be a member of a panel dealing with proposals if that person has, or at any time has had, a relevant connection with –
- 20 (a) the appointing authority,
- (b) the proposer (if different), or
- (c) the school to which the proposals relate.
- (2) A relevant connection is one which might reasonably be taken to raise doubts about the person’s ability to act impartially in relation to the proposals.
- 25

Clerk to the panel

- 5 The appointing authority must provide the panel with a person to act as a clerk to the panel (who is not a member of the panel).

Procedure

- 30 6 The panel must elect a chair.
- 7 (1) Questions to be decided at a meeting of the panel are to be decided by a majority of the votes of members present and voting on the question, and in the case of an equality of votes the chair has a second or casting vote.

(2) A panel must make a decision on proposals referred to it before the end of 16 weeks beginning with the end of the objection period (but a failure to comply with that time limit does not affect the validity of its decision).

(3) Before the end of 7 days beginning with the day on which it makes the decision, the panel must send the decision and the reasons for making it, in writing, to –

- (a) the proposer,
- (b) the appointing authority (if different), and
- (c) the Welsh Ministers.

(4) The appointing authority must publish the panel's decision on its website.

(1) Sub-paragraph (2) applies where, at any time after a panel has begun to consider proposals, a member –

- (a) dies,
- (b) becomes unable through illness to continue as a member, or
- (c) becomes unable to continue as a member because doubts may reasonably be raised about the member's ability to act impartially.

(2) A panel may continue with its consideration of the proposals so long as –

- (a) the number of remaining members is not less than three, and
- (b) if the panel included a representative nominated under paragraph 2(2) when it began to consider the proposals, that representative is one of the remaining members.

Subject to any provision made by this Schedule or the code issued under section 38(1) for the time being in force, a panel may regulate its own procedure.

Financial assistance

(1) The appointing authority must provide the panel with the resources it reasonably requires to enable it to carry out its functions adequately.

(2) "Resources" includes (but is not limited to) the provision of accommodation, staff, advice and financial assistance.

Allowances for members

A panel member who is not a member of the appointing authority is to be treated as a member of the appointing authority for the purposes of Part 8 of the Local Government (Wales) Measure 2011 (payments to authority members).

Indemnity

The appointing authority must indemnify the members of the panel against any reasonable legal costs and expenses reasonably incurred by them in connection with any decision or action taken by them in good faith when carrying out their functions as members of the panel.

Intervention powers

- 13 Chapter 2 of Part 2 of this Act (intervention powers of Welsh Ministers in local
authorities) has effect in relation to a panel as if—
- 5 (a) references to a local authority included references to a panel, and
(b) references to education functions included duties imposed and powers conferred
on a panel by virtue of this Act.

Ombudsman

- 14 In Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (listed authorities),
after the heading “Education and Training” after the entry relating to an exclusion panel,
10 insert—
- “a local determination panel appointed under section 53 of the School
Standards and Organisation (Wales) Act 2013.”

SCHEDULE 4
(Introduced by section 56)

IMPLEMENTATION OF STATUTORY PROPOSALS

PART 1

5 RESPONSIBILITY FOR IMPLEMENTATION

Interpretation

1 In this Part of this Schedule –

- (a) “proposals” means proposals falling to be implemented under section 56;
- (b) a reference to a local authority in relation to a school or proposed school is a reference to the local authority that maintains, or that will maintain, that school.

Proposals relating to community or maintained nursery schools

- 2 (1) This paragraph applies to proposals relating to a community or maintained nursery school or a proposed community or maintained nursery school.
- 15 (2) Proposals made by a local authority under section 41, 42 or 43 must be implemented by the local authority.

Proposals relating to foundation or voluntary controlled schools

- 3 (1) This paragraph applies to proposals relating to a foundation or voluntary controlled school or a proposed voluntary controlled school.
- 20 (2) Proposals made by a local authority under section 41(2) or 43(1)(a) must be implemented by the authority.
- (3) Proposals made by a local authority under section 42(1)(b) or (c) must be implemented by both the authority and governing body.
- 25 (4) Proposals made under section 41(2) (other than by a local authority) must be implemented by the local authority and by the person who made the proposals to the extent (if any) that the proposals provide for each of them to do so.
- (5) Proposals made by a governing body under section 42(2) must be implemented by the local authority and by the governing body to the extent (if any) that the proposals provide for each of them to do so.
- 30 (6) Proposals made by a governing body under section 43(2) must be implemented by both the governing body and the local authority.

Proposals relating to voluntary aided schools

- 4 (1) This paragraph applies to proposals relating to a voluntary aided school or a proposed voluntary aided school.

- (2) Proposals made by a local authority under section 42(1)(b) or (c) must be implemented by both the authority and the governing body.
- (3) Proposals made under section 41(2) must be implemented –
- 5 (a) where the local authority is the proposer, by the local authority, and
- (b) where the local authority is not the proposer –
- (i) so far as relating to the provision of relevant premises for the school, by the local authority, and
- (ii) otherwise by the person who made the proposals.
- (4) Nothing in sub-paragraph (3)(b) requires a local authority to provide relevant premises
- 10 where –
- (a) the new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals, and
- (b) those premises were part of the premises of any of the existing schools but were
- 15 not provided by the authority.
- (5) Proposals made by a governing body under section 42(2) must be implemented –
- (a) so far as relating to the provision of relevant premises for the school, by the local authority, and
- (b) otherwise by the governing body.
- (6) “Relevant premises” means –
- 20 (a) playing fields, or
- (b) buildings which are to form part of the school premises but are not to be school buildings.
- (7) Proposals made by a local authority under section 43(1) must be implemented by the
- 25 authority.
- (8) Proposals made by the governing body under section 43(2) must be implemented by both the governing body and the local authority.

Proposals relating to community or foundation special schools

- 5 (1) This paragraph applies to proposals relating to –
- 30 (a) a community or foundation special school, or
- (b) a proposed community or foundation special school.
- (2) Proposals made by a local authority under section 44(1) must be implemented by the authority.
- (3) Proposals made by a governing body under section 44(2)(a) must be implemented by the
- 35 local authority and by the governing body to the extent (if any) that the proposals provide for each of them to do so.
- (4) Proposals made by a governing body under section 44(2)(b) must be implemented by both the governing body and the local authority.

Change of category

- 6 If a school changes category from a community or community special school after
proposals have been published under section 49 but before they have been implemented,
the proposals (to the extent that they have not been implemented) must be implemented
5 by the local authority (despite paragraphs 3 to 5).

PART 2

PROVISION OF PREMISES AND OTHER ASSISTANCE

Provision of site and buildings for foundation, voluntary controlled or foundation special school

- 7 (1) This paragraph applies where a local authority is required –
- 10 (a) by virtue of paragraph 3 (2), (3), (4) or (5) to provide a site for a foundation or
voluntary controlled school or a proposed voluntary controlled school, or
- (b) by virtue of paragraph 5(2) or (3) to provide a site for a foundation special school
or a proposed foundation special school.
- (2) The authority must transfer its interest in the site and in any buildings on the site which
15 are to form part of the school premises –
- (a) to the school's trustees, to be held by them on trust for the purposes of the school,
or
- (b) if the school has no trustees, to the school's foundation body or (in the absence of
such a body) to the governing body, to be held by that body for the relevant
20 purposes.
- (3) If any doubt or dispute arises as to the persons to whom the authority is required to make
the transfer, it must be made to such persons as the Welsh Ministers think proper.
- (4) The authority must pay to the persons to whom the transfer is made their reasonable
costs in connection with the transfer.
- 25 (5) Sub-paragraph (6) applies where –
- (a) a transfer is made under this paragraph, and
- (b) the transfer is made to persons ("the transferees") who possess, or are or may
become entitled to, any sum representing proceeds of the sale of other premises
which have been used for the purposes of the school.
- 30 (6) The transferees must notify the local authority that sub-paragraph (5)(b) applies to them
and they or their successors must pay to the local authority so much of that sum as,
having regard to the value of the interest transferred, may be determined to be just, either
by agreement between them and the authority or, in default of agreement, by the Welsh
Ministers.
- 35 (7) In sub-paragraph (5)(b) the reference to proceeds of the sale of other premises includes a
reference to –
- (a) consideration for the creation or disposition of any kind of interest in other
premises, including rent, and

(b) interest which has accrued in respect of any such consideration.

(8) Any sum paid under sub-paragraph (6) is to be treated for the purposes of section 14 of the Schools Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.

5 (9) A determination may be made under sub-paragraph (6) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) if (and only if) –

(a) the determination is made by the Welsh Ministers, and

10 (b) they are satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(10) Sub-paragraph (6) applies for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in sub-paragraph (5)(b) (if any) as remains after the application of paragraphs 1 to 3 of Schedule 22 to the School Standards and Framework Act 1998 (disposals of land - foundation, voluntary and foundation special schools) to that sum.

15 (11) In this paragraph –

“the relevant purposes” (*“y dibenion perthnasol”*) means –

(a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, or

20 (b) in relation to a transfer to a school’s governing body, the purposes of the school;

“site” (*“safle”*) does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

Grants in respect of certain expenditure relating to existing or proposed voluntary aided school

25 8 (1) This paragraph applies where –

(a) the governing body of a voluntary aided school is required by virtue of paragraph 4(5) to implement proposals to make a regulated alteration to the school, or

(b) a person is required by virtue of paragraph 4(3)(b) to implement proposals to establish a new voluntary aided school.

30 (2) Paragraph 5 of Schedule 3 to the School Standards and Framework Act 1998 (grants to voluntary aided schools in respect of expenditure on premises or equipment) –

(a) applies in relation to the school mentioned in sub-paragraph (1)(a), and

(b) applies in relation to the new school mentioned in sub-paragraph (1)(b) as it applies in relation to an existing voluntary aided school.

35 (3) In the application of that paragraph in relation to a new voluntary aided school –

- (a) the references to the governing body, in relation to any time before the governing body is constituted, are to the person who made the proposals under section 41(2), and
- (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the person who made the proposals, the requirements must be complied with by the governing body, when it is constituted, as well as by that person.

Assistance in respect of maintenance and other obligations relating to voluntary aided school

9 A local authority may give to the governing body of a voluntary aided school such
10 assistance as the authority thinks fit in relation to the carrying out by the governing body of any obligation arising by virtue of paragraph 4 (5) in relation to proposals made by it under section 42(2).

Assistance in respect of new voluntary aided school

10 A local authority may give to persons required by virtue of paragraph 4(3)(b) to
15 implement proposals to establish a voluntary aided school such assistance as it thinks fit in relation to the carrying out by those persons of any obligation arising by virtue of that paragraph.

Duty to transfer interest in premises provided under paragraph 9 or 10

- 11 (1) Where assistance under paragraph 9 or 10 consists of the provision of any premises for
20 use for the purposes of a school, the local authority must transfer its interest in the premises –
- (a) to the trustees of the school to be held on trust for the purposes of the school, or
- (b) if the school has no trustees, to the school's foundation body, to be held by that
25 body for the purposes of the schools comprising the group for which that body acts.
- (2) If any doubt or dispute arises as to the persons to whom the authority is required to make the transfer it must be made to such persons as the Welsh Ministers think proper.
- (3) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

30 PART 3

TRANSITIONAL EXEMPTION ORDERS FOR PURPOSES OF THE EQUALITY ACT 2010

Single-sex schools

- 12 (1) This paragraph applies to proposals to make a regulated alteration described in
35 paragraph 3(1)(a) of Schedule 2 (school to cease to be one which admits pupils of one sex only).

(2) Sub-paragraph (3) applies where such proposals are made under section 42 or 44 and, in accordance with section 49(4), the proposer sends a copy of the published proposals to the Welsh Ministers.

5 (3) The sending of the published proposals to the Welsh Ministers is to be treated as an application by the proposer for a transitional exemption order under the Equality Act 2010, and the Welsh Ministers may make such an order accordingly.

(4) In this paragraph –

“make” (*“gwneud”*), in relation to a transitional exemption order, includes vary or revoke;

10 “transitional exemption order” (*“gorchymyn esemptio trosiannol”*) has the same meaning as in paragraph 3 of Schedule 11 to the Equality Act 2010.

SCHEDULE 5
(Introduced by section 56)

IMPLEMENTATION OF PROPOSALS TO CHANGE CATEGORY OF SCHOOL

PART 1

INTRODUCTORY

Interpretation

1 In this Schedule—

“group” (*“grŵp”*) has the meaning given by section 21(4)(b) of the School Standards and Framework Act 1998;

10 “the implementation date” (*“y dyddiad gweithredu”*) means the date on which it is proposed that the change of category is to take place;

“publicly funded land” (*“tir wedi ei gyllido’n gyhoeddus”*) means land which was acquired—

15 (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996,

(b) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter 6 of Part 3 of the Education Act 1996),

(c) wholly by means of a grant made under regulations made under paragraph 4 of Schedule 32 to the School Standards and Framework Act 1998,

20 (d) wholly by means of expenditure incurred for the purposes of the school and treated by the local authority as expenditure of a capital nature,

(e) under a transfer under regulations made under paragraph 5 of Schedule 8 to the School Standards and Framework Act 1998,

25 (f) wholly by means of financial assistance given under section 14 of the Education Act 2002,

(g) under a transfer under this Schedule, or

(h) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (g),

30 “transfer agreement” (*“cytundeb trosglwyddo”*), in relation to a school, means an agreement—

(a) made between the local authority and the trustees or the foundation body or the governing body of the school, and

35 (b) providing for land to be transferred to, and vest in, the local authority on the implementation date (whether or not in consideration of payment by the authority).

Implementation

- 2 On the implementation date the school is to change category in accordance with the proposals.

PART 2

TRANSFER OF STAFF

Change to voluntary aided school or foundation special school

- 3 (1) This paragraph applies where –

(a) a community or voluntary controlled school changes category to become a voluntary aided school, or

(b) a community special school changes category to become a foundation special school.

(2) The contract of employment between P and the local authority has effect from the implementation date as if originally made between P and the governing body.

(3) All the local authority's rights, powers, duties and liabilities under or in connection with the contract of employment are transferred to the governing body on the implementation date.

(4) Anything done before that date by or in relation to the local authority in connection with that contract or P is to be treated from that date as having been done by or in relation to the governing body.

(5) In this paragraph, "P" is a person who –

(a) immediately before the implementation date is employed by the local authority to work solely at the school in question, or

(b) before the implementation date, is appointed by the local authority to work at the school as from the implementation date or a later date.

(6) But a reference to "P" does not include –

(a) a person whose contract of employment terminates on the day immediately preceding the implementation date, or

(b) a person employed by the local authority to work at the school solely in connection with the provision of meals.

(7) This paragraph does not affect any right of an employee to terminate the contract if (apart from the change of employer) a substantial change is made to the employee's detriment in the employee's working conditions.

Change to community or voluntary controlled school or community special school

- 4 (1) This paragraph applies where –

(a) a foundation or voluntary aided school changes category to become a community or voluntary controlled school, or

(b) a foundation special school changes category to become a community special school.

- (2) The contract of employment between P and the governing body has effect from the implementation date as if originally made between P and the local authority.
- (3) All the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment are transferred to the local authority on the implementation date.
- (4) Anything done before that date by or in relation to the governing body in connection with that contract or P is to be treated from that date as having been done by or in relation to the local authority.
- (5) In this paragraph, "P" is a person who—
- (a) immediately before the implementation date is employed by the governing body to work at the school in question, or
- (b) before the implementation date, is appointed by the governing body to work at the school as from the implementation date or a later date.
- (6) But "P" does not include a person whose contract of employment terminates on the day immediately preceding the implementation date.
- (7) This paragraph does not affect any right of an employee to terminate the contract if (apart from the change of employer) a substantial change is made to the employee's detriment in the employee's working conditions.

Change to voluntary aided school with a religious character

- (1) This paragraph applies where a voluntary controlled school or a foundation school with a religious character changes category to become a voluntary aided school with a religious character.
- (2) Sub-paragraph (3) applies if, immediately before the implementation date, a teacher at the voluntary controlled school or foundation school enjoys rights conferred by section 59(2) to (4) of the School Standards and Framework Act 1998 by virtue of section 60(2) of that Act.
- (3) That teacher is to continue to enjoy those rights while employed as a teacher at the voluntary aided school.

PART 3

TRANSFER OF LAND

Effect of transfers

- (1) Sub-paragraph (2) applies where—
- (a) land is transferred to and vests in a body in accordance with this Schedule, and
- (b) the transferor enjoys or incurs any rights or liabilities immediately before the implementation date in connection with that land.
- (2) Those rights or liabilities are also transferred to, and by virtue of this Schedule, vest in, that body.

- 7 Any reference in this Part of this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.
- 5 8 Transfers of land under this Schedule do not affect the rights of the governing body in relation to the land under Schedule 13 to the School Standards and Framework Act 1998.
- 9 In its application to transfers under this Schedule, Schedule 10 to the Education Reform Act 1988 has effect as if references in it to the transfer date were references to the implementation date.
- 10 *Change from community school to voluntary aided school*
- 10 (1) Sub-paragraph (2) applies where –
- (a) proposals for a community school to become a voluntary aided school are required to be implemented under section 56(2), and
- 15 (b) as from the implementation date the school will not be a member of the group for which a foundation body acts.
- (2) Any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school is, on that date, to be transferred to, and vest in, the trustees of the school, to be held by them on trust for the purposes of the school.
- 20 11 (1) Sub-paragraph (2) applies where –
- (a) proposals for a community school to become a voluntary aided school are required to be implemented under section 56(2), and
- (b) as from the implementation date the school will be a member of the group for which a foundation body acts.
- 25 (2) Any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school is, on that date, to be transferred to, and vest in, the foundation body.

Change from community school to voluntary controlled school

- 12 (1) Sub-paragraph (2) applies where –
- 30 (a) proposals for a community school to become a voluntary controlled school are required to be implemented under section 56(2), and
- (b) as from the implementation date the school will not be a member of the group for which a foundation body acts.
- (2) Any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school is, on that date, to be transferred to, and vest in, the trustees of the school, to be held by them on trust for the purposes of the school.
- 35
- 13 (1) Sub-paragraph (2) applies where –

(a) proposals for a community school to become a voluntary controlled school are required to be implemented under section 56(2), and

(b) as from the implementation date the school will be a member of the group for which a foundation body acts.

5 (2) Any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school is, on that date, to be transferred to, and vest in, the foundation body.

Change from foundation school to community school

10 14 (1) Sub-paragraphs (2) and (3) apply where proposals for a foundation school which is not a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).

(2) Any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the school is, on that date, to be transferred to, and vest in, the local authority.

15 (3) Any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.

15 20 (1) Sub-paragraphs (2) and (3) apply where proposals for a foundation school which is a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).

(2) Any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school is, on that date, to be transferred to, and vest in, the local authority.

25 (3) Any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.

Change from foundation school to voluntary aided or voluntary controlled school

30 16 (1) Sub-paragraph (2) applies where –

(a) proposals for a foundation school which is not a member of the group for which a foundation body acts to become a voluntary aided or voluntary controlled school are required to be implemented under section 56(2), and

(b) as from the implementation date the school will not be a member of the group.

35 (2) Any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school is, on that date, to be transferred to, and vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

17 (1) Sub-paragraph (2) applies where –

- (a) proposals for a foundation school which is not a member of the group for which a foundation body acts to become a voluntary aided or voluntary controlled school are required to be implemented under section 56(2), and
- (b) as from the implementation date the school will be a member of the group.
- 5 (2) Any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school is, on that date, to be transferred to, and vest in, the foundation body.
- 18 (1) Sub-paragraph (2) applies where—
- 10 (a) proposals for a foundation school which is a member of the group for which a foundation body acts to become a voluntary aided or voluntary controlled school are required to be implemented under section 56(2), and
- (b) as from the implementation date the school will not be a member of the group.
- (2) Any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school is, on that date, to be transferred to, and vest in, the trustees of the school, to be held by them on trust for the purposes of the school.
- 15

Change from voluntary aided school to community school

- 19 (1) Sub-paragraphs (2) and (3) apply where proposals for a voluntary aided school which is not a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).
- 20 (2) Any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the school is, on that date, to be transferred to, and vest in, the local authority.
- (3) Any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.
- 25
- 20 (1) Sub-paragraphs (2) and (3) apply where proposals for a voluntary aided school which is a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).
- 30 (2) Any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school is, on that date, to be transferred to, and vest in, the local authority.
- (3) Any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.
- 35

Change from voluntary aided or voluntary controlled school to voluntary controlled or voluntary aided school

21 (1) Sub-paragraph (2) applies where—

5 (a) proposals for a voluntary aided school or a voluntary controlled school which is not a member of the group for which a foundation body acts to become a voluntary controlled school or a voluntary aided school are required to be implemented under section 56(2), and

(b) as from the implementation date the school will be a member of such a group.

10 (2) Any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the school is, on that date, to be transferred to, and vest in, the foundation body.

22 (1) Sub-paragraph (2) applies where—

15 (a) proposals for a voluntary aided school or a voluntary controlled school which is a member of the group for which a foundation body acts to become a voluntary controlled school or a voluntary aided school are required to be implemented under section 56(2), and

(b) as from the implementation date the school will not be a member of the group.

20 (2) Any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the school is, on that date, to be transferred to, and vest in, the trustees of the school to be held by them on trust for the purposes of the school.

Change from foundation, voluntary aided or voluntary controlled school to voluntary controlled or voluntary aided school

23 (1) Sub-paragraph (2) applies where—

25 (a) proposals for a foundation, voluntary aided or voluntary controlled school which is a member of the group for which a foundation body acts to become a voluntary controlled or voluntary aided school are required to be implemented under section 56(2), and

30 (b) as from the implementation date the school will be a member of the group for which another foundation body acts.

(2) Any land which, immediately before the implementation date, was held by the foundation body mentioned in sub-paragraph (1)(a) for the purposes of the schools in the group and used for the purposes of the school is, on that date, to be transferred to, and vest in, the foundation body mentioned in sub-paragraph (1)(b).

35 *Change from voluntary controlled school to community school*

24 (1) Sub-paragraphs (2) and (3) apply where proposals for a voluntary controlled school which is not a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).

(2) Any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the school is, on that date, to be transferred to, and vest in, the local authority.

(3) Any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.

(1) Sub-paragraphs (2) and (3) apply where proposals for a voluntary controlled school which is a member of the group for which a foundation body acts to become a community school are required to be implemented under section 56(2).

(2) Any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school is, on that date, to be transferred to, and vest in, the local authority.

(3) Any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.

Change from community special school to foundation special school

(1) Sub-paragraph (2) applies where proposals for a community special school to become a foundation special school are required to be implemented under section 56(2).

(2) Any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school is, on that date, to be transferred to, and vest in—

(a) the trustees of the school, to be held by them on trust for the purposes of the school, or

(b) if the school has no trustees, the governing body.

Change from foundation special school to community special school

(1) Sub-paragraphs (2) and (3) apply where proposals for a foundation special school to become a community special school are required to be implemented under section 56(2).

(2) Any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation special school is, on that date, to be transferred to, and vest in, the local authority.

(3) Any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation special school is to be transferred to, and vest in, the local authority in accordance with a transfer agreement.

Outstanding transfers

- 28 (1) Sub-paragraph (2) applies where immediately before the implementation date in relation to any change of category occurring in respect of a school—
- 5 (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of the school, but
- (b) the land has not yet been so transferred.
- (2) Paragraphs 10 to 27 of this Schedule apply to the school as if the land had been so transferred by that time.

Transfer of right to use land

- 10 29 (1) Sub-paragraph (2) applies if—
- (a) paragraph 10, 11, 12, 13 or 26 applies to a school,
- (b) any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, and
- 15 (c) the local authority enjoyed or incurred any rights or liabilities immediately before the implementation date in connection with the use of the land.
- (2) Those rights and liabilities are, on the implementation date, to be transferred to, and vest in, the trustees of the school or, if there are no trustees, the governing body.
- 30 (1) Sub-paragraph (2) applies if—
- (a) paragraph 14, 15, 19, 20, 24, 25 or 27 applies to a school,
- 20 (b) any land held by a person or body other than the governing body of the school was, immediately before the implementation date, used for the purposes of the school, and
- (c) the governing body enjoyed or incurred any rights and liabilities immediately before the implementation date in connection with the use of the land.
- 25 (2) Those rights and liabilities are, on the implementation date, to be transferred to, and vest in, the local authority.
- 31 (1) Sub-paragraph (2) applies if—
- (a) paragraph 14, 15, 19, 20, 24, 25 or 27 applies to a school,
- (b) any land held by a person or body other than any trustees or foundation body who hold any land for the purposes of the school was, immediately before the implementation date, used for the purposes of the school, and
- 30 (c) the trustees or foundation body enjoyed or incurred any rights or liabilities immediately before the implementation date in connection with the use of the land.

- (2) Those rights and liabilities are, on the implementation date, to be transferred to, and vest in, the local authority in accordance with a transfer of rights and liabilities agreement.
- (3) A “transfer of rights and liabilities agreement” means an agreement –
- 5 (a) made for the purposes of sub-paragraph (2) between the local authority and the trustees or foundation body, and
- (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

Exclusions from transfer

- 10 32 Nothing in paragraphs 10 to 27 has the effect of transferring to, or vesting in, any body –
- (a) any land, rights or liabilities excluded under paragraph 33 or 34,
- (b) any rights or liabilities under a contract of employment,
- (c) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan, or
- 15 (d) any liability in tort.
- 33 (1) Sub-paragraph (2) applies if before the implementation date in relation to any change of category –
- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of paragraphs 10 to 27, and
- 20 (b) the Welsh Ministers have given their written approval of the agreement.
- (2) The land (and any rights or liabilities relating to it) is to be so excluded.
- 34 (1) Sub-paragraph (2) applies if in the absence of agreement under paragraph 33 –
- (a) the prospective transferee or transferor has applied to the Welsh Ministers to exclude any land from the operation of paragraphs 10 to 27, and
- 25 (b) the Welsh Ministers have by order directed its exclusion.
- (2) The land (and any rights or liabilities relating to it) is to be excluded.
- 35 (1) An agreement under paragraph 33 may provide for the land to be used or held for the purposes of the school on such terms as may be specified in or determined in accordance with the agreement.
- 30 (2) Directions under paragraph 34 –
- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by an agreement under paragraph 33, and
- (b) have effect as if contained in such an agreement.
- 36 In paragraphs 33 and 34 –

“the prospective transferee” (“*y trosglwyddai arfaethedig*”), in relation to any land, means the body to which (apart from paragraphs 33 and 34) the land would fall to be transferred under paragraphs 10 to 27, and

“the prospective transferor” (“*y trosglwyddwr arfaethedig*”) is to be construed accordingly.

Restrictions on disposal or use of land

- 37 (1) For the purposes of paragraphs 38 and 39 the procedure for becoming a school of another category is pending in relation to a school when it has been started by the governing body in relation to the school and not terminated.
- 10 (2) That procedure is to be regarded as started in relation to a school on receipt by the local authority of notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered.
- (3) That procedure is to be regarded as terminated –
- 15 (a) if the meeting is not held,
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed,
- (c) if consultation is not carried out in accordance with section 49,
- (d) if the proposals in respect of which consultation was carried out are not published in accordance with section 49,
- 20 (e) if the proposals are rejected by the Welsh Ministers under section 52 or by the local determination panel under section 53 or are withdrawn or if the governing body has determined not to implement them under section 55, or
- (f) on the date of implementation of the proposals.
- 38 (1) While the procedure for becoming a school of another category is pending in relation to a school, a local authority may not, without the consent of the Welsh Ministers –
- 25 (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of such land.
- (2) Sub-paragraph (1) does not apply in relation to a disposal which is made in accordance with a contract entered into, or an option granted, before the procedure for becoming a school of another category was started in relation to the school.
- 30 (3) Sub-paragraph (4) applies if –
- (a) proposals for becoming a school of another category are approved or the governing body has determined to implement them, and
- (b) agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to any land to be transferred.
- 35 (4) The procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to that land until the date on which that matter is finally determined.

- (5) A disposal or contract is not invalid or void by reason only that it has been made or entered into in breach of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority is not to be concerned to enquire whether any consent required by this paragraph has been given.
- 5 (6) This paragraph has effect despite anything in section 123 of the Local Government Act 1972 (general power to dispose of land) or in any other enactment; and the consent required by this paragraph is in addition to any consent required by subsection (2) of that section or by any other enactment.
- (7) In this paragraph –
- 10 (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.
- 39 (1) While the procedure for becoming a school of another category is pending in relation to a school, a local authority may not, without the consent of the Welsh Ministers, take any action in relation to any land of the authority used or held for the purposes of the school by which the land ceases to any extent to be so used or held.
- 15 (2) Sub-paragraph (3) applies if in the case of any school –
- 20 (a) proposals that a school become a school of another category are approved or the governing body have determined to implement them, and
- (b) a local authority has, in relation to any land, taken action in breach of sub-paragraph (1).
- (3) The transfer of property provisions have effect as if, immediately before the implementation date, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was started.
- 25 (4) In this paragraph –
- (a) “the transfer of property provisions” means this Schedule and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
- 30 (b) the references to taking action include appropriating property for any purpose.

PART 4

SUPPLEMENTAL

School government

- 40 (1) The Welsh Ministers may by regulations make provision in connection with the implementation of proposals to change a school’s category with respect to the government of the school.
- 35 (2) Those regulations may (amongst other things) make provision –

- 5
- (a) about the revision and replacement of the school's instrument of government,
 - (b) about the reconstitution of its governing body,
 - (c) applying, with or without modifications, provision made by or under Chapter 1 of Part 3 of the Education Act 2002 (government of maintained schools), and
 - (d) about transitional matters.

Transitional provisions - admissions

- 41
- 10
- 15
- (1) Where a community or voluntary controlled school becomes a voluntary aided school anything done before the implementation date by the local authority as admission authority under any provision in Chapter 1 of Part 3 of the School Standards and Framework Act 1998 (admission arrangements) has effect, from the implementation date, as if done by the governing body.
 - (2) Where a foundation or voluntary aided school becomes a community or voluntary controlled school anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part 3 of the School Standards and Framework Act 1998 has effect, from the implementation date, as if done by the local authority.

SCHEDULE 6
(Introduced by section 100)

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS RELATING TO PART 2 (STANDARDS)

5

Education Reform Act 1988

- 1 (1) Section 219 of the Education Reform Act 1988 (powers of Welsh Ministers and Secretary of State in relation to certain educational institutions) is amended as follows.
- (2) In subsection (3) after “institution” insert “in England”.
- 10 (3) After subsection (3) insert—
- “(3A) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) (intervention in conduct of maintained schools) has effect in relation to an institution in Wales to which this section applies as if—
- 15 (a) a reference to the governing body of a maintained school included a reference to the governing body of an institution to which this section applies;
- (b) the only relevant grounds for intervention were grounds 5 and 6 in section 2 of the 2013 Act; and
- 20 (c) sections 3 to 26 and 12 to 16 of the 2013 Act did not apply.”

Education Act 1996

- 2 (1) The Education Act 1996 is amended as follows.
- (2) In section 409(4) (complaints and enforcement: maintained schools in Wales) for the words from “section 496” to “duties)” substitute “Chapter 1 or 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in conduct of maintained schools and local authorities)”.
- 25 (3) In section 484(7) (education standards grants) for “sections 495 to 497” substitute “section 495 or in Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013”.
- (4) In section 496(2) (power to prevent unreasonable exercise of functions)—
- 30 (a) in paragraph (a), after “local authority” insert “in England”;
- (b) in paragraph (b) after “school” in each place it appears insert “in England”.
- (5) In section 497(2) (general default powers for failure to discharge duty)—
- (a) in paragraph (a), after “local authority” insert “in England”;
- (b) in paragraph (b), after “school” in each place it appears insert “in England”.

- (6) In section 497A(1) (power to secure proper performance of functions) for “a local authority’s education functions” substitute “the education functions of a local authority in England”.
- (7) In section 560(6) (work experience in last year of compulsory schooling) after “or 496” insert “or Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013”.
- (8) In paragraph 6(4) of Schedule 1 (pupil referral units) for the words from “section 496” to “powers” substitute “Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in local authorities)”.

10 *Teaching and Higher Education Act 1998*

3 In section 19 of the Teaching and Higher Education Act 1998 (requirement to serve induction period) for subsection (12) substitute –

“(12) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) (intervention in conduct of maintained schools) has effect in relation to duties imposed and powers conferred by virtue of this section as if –

(a) references to functions under the Education Acts included duties imposed and powers conferred by virtue of this section;

(b) references to the governing body of a maintained school included –

(i) the governing body of a special school not maintained by a local authority,

(ii) the governing body (within the meaning given by section 90(1) of the Further and Higher Education Act 1992) of a further education institution, and

(iii) an appropriate body for the purposes of subsection (2);

(c) the only relevant grounds for intervention were grounds 5 and 6 in section 2 of the 2013 Act; and

(d) sections 3 to 26 and 12 to 16 of that Act did not apply.

(13) Chapter 2 of Part 2 of the 2013 Act (intervention in local authorities) has effect in relation to duties imposed and powers conferred by virtue of this section as if references to education functions included duties imposed and powers conferred on a local authority by virtue of this section.”

35 *School Standards and Framework Act 1998*

4 (1) The School Standards and Framework Act 1998 is amended as follows.

(2) Chapter 4 of Part 1 (intervention in schools in Wales causing concern) is repealed.

(3) In section 51A (expenditure incurred for community purposes) –

(a) omit “section 17 or”;

(b) after “15” insert “or section 8 of the School Standards and Organisation (Wales) Act 2013”.

(4) In section 62 (reserve power to prevent breakdown of discipline)—

(a) in subsection (1)—

(i) after “local authority” insert “in England”;

(ii) omit “or (3)”;

(b) omit subsection (3).

(5) In section 89C(2) (further provision about schemes for co-ordinating admission arrangements) for “, sections 496” to the end substitute—

“(a) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) (intervention in conduct of maintained schools) is to apply as if any obligations imposed on a governing body under the scheme were duties imposed by the Education Acts.

(b) Chapter 2 of Part 2 of the 2013 Act (intervention in local authorities) is to apply as if any obligation imposed on a local authority were an education function.”

(6) In section 142(4)(b) (general interpretation) omit “of section 16(6) or (8)”.

(7) In section 143 (index) in the entry for “maintained school”, omit the entry beginning “(in Chapter 4 of Part 1)”.

(8) Omit Schedule 1A (governing bodies consisting of interim executive members).

(9) In Schedule 22 (disposal of land), in paragraph 5(1)(b)(i) for “section 19(1)” substitute “section 16 of the School Standards and Organisation (Wales) Act 2013”.

Local Government Act 2000

(1) Schedule 1 to the Local Government Act 2000 (executive arrangements in Wales) is amended as follows.

(2) For paragraph 10 substitute—

“10 Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in local authorities) applies to the performance of any duty imposed on a local authority by virtue of paragraph 8 or 9 as it applies to the performance by a local authority of a duty that is an education function but as if—

(a) the only relevant grounds for intervention were grounds 1 and 2 in section 21 of that Act; and

(b) sections 24 to 27 of that Act did not apply.”

(3) In paragraph 11A for “9” substitute “10”.

Education Act 2002

(1) The Education Act 2002 is amended as follows.

- (2) In section 34(7) (arrangements for government of new schools) after “State)” insert “and Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in conduct of maintained schools in Wales)”.
- 5 (3) In section 35(7) (staffing of community, voluntary controlled, community special and maintained nursery schools) –
- (a) omit “section 17 of, or”;
- (b) after “2006” insert “, or section 8 of the School Standards and Organisation (Wales) Act 2013”.
- 10 (4) In section 36(7) (staffing of foundation, voluntary aided and foundation special schools) –
- (a) omit “section 17 of, or”;
- (b) after “2006” insert “, or section 8 of the School Standards and Organisation (Wales) Act 2013”.
- 15 (5) In section 37(11) (payments in respect of dismissal, etc) –
- (a) omit “section 17 of, or”;
- (b) after “1998 (c 31)” insert “or section 8 of the School Standards and Organisation (Wales) Act 2013”.
- (6) Omit sections 55 to 59 and section 63 (powers of intervention).
- 20 (7) In section 64 (provisions supplementary to powers to require local authorities to obtain advisory services) –
- (a) in subsection (1) –
- (i) omit “or 63”,
- (ii) omit “or the National Assembly for Wales”,
- (iii) omit “or it”,
- 25 (iv) omit “or the Assembly” (in both places);
- (b) in subsection (2) omit “or 63”;
- (c) in subsection (7) omit “or 63” and “or 63(2)”.
- (8) Omit Schedules 5 and 6 (amendments relating to schools causing concern and governing bodies consisting of interim executive members).
- 30 (9) In Schedule 21 (minor and consequential amendments) omit paragraphs 92 to 94 and 103.
- (10) See also the amendment made by paragraph 20(6) of this Schedule to paragraph 5(2)(b) (iii) of Schedule 1 (which is in part consequential on Part 2 of this Act).

Children Act 2004

- 7 (1) The Children Act 2004 is amended as follows.
- 35 (2) In section 50 (intervention) –
- (a) in subsection (1) after “local authority” insert “in England”;

(b) in subsection (2)(c) omit “or under sections 25, 26 and 29 above (in the case of a local authority in Wales)”;

(c) in the heading after “Intervention” insert “- England”.

(3) After section 50 insert –

“50A Intervention – Wales

(1) Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in local authorities) applies in relation to the functions of a local authority in Wales which are specified in subsection (2) as it applies in relation to a local authority’s education functions but as if the only relevant ground for intervention were ground 3 in section 21 of that Act.

(2) The functions of a local authority are –

(a) functions conferred on or exercisable by the authority which are social services functions, so far as those functions relate to children;

(b) the functions conferred on the authority under sections 23C to 24D of the Children Act 1989 (so far as not falling within paragraph (a)); and

(c) the functions conferred on the authority under sections 25, 26 and 29 above.

(3) In the application of Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 by virtue of this section, section 27 of that Act (power to direct exercise of other education functions) has effect as if the reference to education functions included (for all purposes) the functions of the local authority which are specified in subsection (2).

(4) In this section –

“education functions” has the meaning given by section 579(1) of the Education Act 1996;

“social services functions” has the same meaning as in the Local Authority Social Services Act 1970.”

Education Act 2005

(1) The Education Act 2005 is amended as follows.

(2) Omit section 45 (power to direct closure of school).

(3) In section 114(8) (supply of information about school workforce) –

(a) omit “and” at the end of paragraph (a);

(b) in paragraph (b) at the beginning insert “in relation to England,”;

(c) after paragraph (b) insert –

“and

(c) in relation to Wales, provide that Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in local authorities) is to have effect as if—

(i) references to a local authority included a reference to a prescribed person,

(ii) duties imposed by virtue of this section were education functions,

(iii) the only relevant ground for intervention were ground 1 in section 21, and

(iv) sections 24 to 27 did not apply.”

(4) In Schedule 9 (amendments relating to school inspection) omit paragraphs 14 to 20.

(5) See also the amendment made by paragraph 21(2)(b) of this Schedule to section 28(4)(c) of the Education Act 2005 (which is in part consequential on Part 2 of this Act).

Education and Inspections Act 2006

(1) The Education and Inspections Act 2006 is amended as follows.

(2) In Schedule 7 (amendments relating to schools causing concern) omit paragraphs 3 to 14, 16, 17, 18, 19(b), 21.

(3) In Schedule 17 (miscellaneous amendments) omit paragraphs 1, 2 and 6.

Childcare Act 2006

For section 29 of the Childcare Act 2006 (powers of Welsh Ministers to secure proper performance etc) substitute—

“29 Powers of intervention of Welsh Ministers

(1) Chapter 2 of Part 2 the School Standards and Organisation (Wales) Act 2013 (intervention in local authorities) applies in relation to a Welsh local authority and the powers conferred or the duties imposed on it by, under or for the purposes of this Part as it applies in relation to the education functions (as defined by section 579(1) of the Education Act 1996) of such an authority.

(2) In the application of Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 by virtue of this section, section 27 of that Act (power to direct exercise of other education functions) has effect as if the reference to education functions included (for all purposes) functions of a Welsh local authority under this Part.”

Equality Act 2010

(1) Section 87 of the Equality Act 2010 (application of certain powers under Education Act 1996) is amended as follows.

(2) At the beginning insert—

“(A1) Subsections (1) and (2) do not apply in the case of a school in Wales.”

(3) After subsection (2) insert—

“(3) In the case of a school in Wales—

(a) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) (intervention in conduct of maintained schools) applies to the performance of a duty under section 85, but as if—

(i) the only relevant grounds for intervention were grounds 5 and 6 in section 2 of that Act, and

(ii) sections 3 to 26 and 12 to 16 of that Act did not apply;

(b) Chapter 2 of Part 2 of the 2013 Act (intervention in local authorities) applies to the performance of a duty under section 85, but as if—

(i) the only relevant grounds for intervention were grounds 1 and 2 in section 21 of that Act, and

(ii) sections 24 to 27 of that Act did not apply.

(4) But neither of Chapters 1 and 2 of Part 2 of the 2013 Act applies to the performance of a duty under section 85 by the proprietor of an independent educational institution (other than a special school).”

20 *Apprenticeships, Skills, Children and Learning Act 2009*

12 In the Apprenticeships, Skills, Children and Learning Act 2009 omit section 205 and Schedule 14 (powers in relation to schools causing concern).

Education (Wales) Measure 2011

13 (1) The Education (Wales) Measure 2011 is amended as follows.

25 (2) Omit section 16 (federation of schools causing concern by direction of the Welsh Ministers).

(3) In section 18(1) (federations: supplementary provisions)—

(a) for paragraph (a) substitute—

30 “(a) Chapter 1 of Part 2 of the School Standards and Organisation (Wales) Act 2013 (intervention in conduct of maintained schools), or”;

(b) in paragraph (b) for “that Act” substitute “the School Standards and Framework Act 1998”.

PART 2

AMENDMENTS RELATING TO PART 3 (SCHOOL ORGANISATION)

Education Reform Act 1988

14 (1) The Education Reform Act 1988 is amended as follows.

5 (2) In section 198(1) (transfers under Parts 1 and 2) after paragraph (c) insert—

“or

(d) Part 3 of Schedule 5 to the School Standards and Organisation (Wales) Act 2013;”.

Diocesan Boards of Education Measure 1991

10 15 (1) The Diocesan Boards of Education Measure 1991 is amended as follows.

(2) In section 3 (transactions for which advice or consent of the Board is required)—

(a) omit subsection (1)(a)(ii), (b)(ii) and (d);

(b) in subsection (1)(c) for “1998 Act” substitute “School Standards and Framework Act 1998 (“the 1998 Act”)”.

15 (3) In section 7 (powers of Board to give directions to governing bodies of voluntary aided church schools)—

(a) in subsection (1)—

(i) omit paragraphs (a)(ii), (b)(ii) and (c);

(ii) in paragraph (b)(i) for “1998 Act” substitute “School Standards and Framework Act 1998”;

20

(b) in subsection (1A) omit “or paragraph 2 or 3 of Schedule 8 to the 1998 Act”;

(c) in subsection (3)—

(i) in paragraph (a) omit “or section 28(2)(b) of the 1998 Act”;

(ii) omit paragraph (b);

25

(iii) in the words after paragraph (b) omit “the 1998 Act and”.

Further and Higher Education Act 1992

16 (1) The Further and Higher Education Act 1992 is amended as follows.

(2) In section 58 (reorganisation of schools involving establishment of further education corporation)—

30 (a) in subsection (3), for paragraph (b) substitute—

“(b) a relevant alteration has been made to the school;”;

(b) omit subsection (4);

(c) at the end insert—

“(5) In subsection (3)(b) “relevant alteration” means—

- (a) in the case of a school in England, a prescribed alteration within the meaning of section 18 of the Education and Inspections Act 2006, and
- (b) in the case of a school in Wales, a regulated alteration within the meaning of Chapter 2 of Part 3 of the School Standards and Organisation (Wales) Act 2013.”

Education Act 1996

17 (1) The Education Act 1996 is amended as follows.

(2) In section 5(3A)(b) (primary schools, secondary schools and middle schools) –

10 (a) the words after “Wales,” become sub-paragraph (i);

(b) after “1998” insert –

“, and

(ii) section 49, 60 or 69 of the School Standards and Organisation (Wales) Act 2013”.

15 (3) In section 394 (determination of cases in which requirement for Christian collective worship is not to apply), omit subsection (9)(b).

(4) In section 529(2) (power to accept gifts on trust for educational purposes) –

(a) for “28 and 31 of the School Standards and Framework Act 1998” substitute “41 and 44 of the School Standards and Organisation (Wales) Act 2013”;

20 (b) for the words from “(so that” to “in Wales” substitute “and sections 49 to 56 of, and Schedule 4 to, that Act (school organisation proposals”.

(5) In section 530(3)(b) (compulsory purchase of land) for the words from “paragraph 18” to the end substitute “paragraph 9 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013 (assistance in respect of maintenance and other obligations relating to voluntary aided schools) (including that paragraph as applied by section (3) of that Act)”.

School Standards and Framework Act 1998

18 (1) The School Standards and Framework Act 1998 is amended as follows.

(2) In section 20(2A)(b) (new categories of maintained schools) after “this Act” insert “or sections 45 to 56 of, and Schedule 5 to, the School Standards and Organisation (Wales) Act 2013”.

(3) In section 21(6) (kinds of foundation and voluntary schools and types of foundations) –

(a) in paragraph (a) –

(i) omit “in accordance with Schedule 8 or”, and

(ii) after “Act 2006” insert “or in accordance with proposals made under section 45 of the School Standards and Organisation (Wales) Act 2013”;

(b) in paragraph (f) –

- (i) in sub-paragraph (i), omit “under paragraph 2 of Schedule 8 or” and after “Act 2006” insert “or under section 49 of the School Standards and Organisation (Wales) Act 2013”,
- (ii) in sub-paragraph (ii), for “that paragraph or that section” substitute “either of those sections”,
- (iii) omit sub-paragraph (iii).
- (4) Omit sections 28 and 29 (proposals for establishment, alteration and discontinuance of mainstream schools).
- (5) In section 30 (notice by governing body to discontinue foundation or voluntary school) –
- (a) in subsection (1) after “voluntary school” insert “in England”;
- (b) in subsection (3) omit paragraph (b);
- (c) in subsection (9) omit paragraph (a);
- (d) in the heading after “voluntary school” insert “in England”.
- (6) Omit sections 31 to 35 (provisions relating to special schools, rationalisation of school places and change of category of schools).
- (7) In section 49(6) (maintained schools to have delegated budgets) –
- (a) omit “paragraph 14(2) of Schedule 6, paragraph 3(3) of Schedule 7A to the Learning and Skills Act 2000”,
- (b) after “2002” insert “section 76(2)(b) of, or paragraph 4 of Schedule 4 to, the School Standards and Organisation (Wales) Act 2013”.
- (8) In section 82(1) (modification of trust deeds) for “or the Academies Act 2010” substitute “, the Academies Act 2010 or the School Standards and Organisation (Wales) Act 2013”.
- (9) Omit section 101(3) (permitted selection: pupil banding).
- (10) In section 103(2)(b) (permitted selection: introduction, variation or abandonment of provision for such selection) for “prescribed alteration for the purposes of section 28” substitute “regulated alteration within the meaning of Chapter 2 of Part 3 of the School Standards and Organisation (Wales) Act 2013”.
- (11) In section 143 (index) –
- (a) omit the entry beginning “alteration”;
- (b) omit the entry beginning “area”;
- (c) omit the entry beginning “discontinuing”;
- (d) omit the entry beginning “promoters”;
- (e) omit the entry beginning “school opening date”.
- (12) In Schedule 3 (funding of foundation, voluntary and foundation special schools) –

- (a) in paragraph 2(2)(a)(ii), for the words from “or promoters” to “proposals)” substitute “or the person by whom proposals were made is required to provide by virtue of Part 2 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013 (provision of premises and other assistance)”;
- 5 (b) in paragraph 7 –
- (i) in sub-paragraph (3)(a) after “28,” insert –
- “(ia) the implementation of proposals made under section 42 of the School Standards and Organisation (Wales) Act 2013 to make a regulated alteration to a school,”;
- 10 (ii) in sub-paragraph (5) for “to the promoters” substitute –
- (a) in relation to England, to the promoters, and
- (b) in relation to Wales, to the person who made the proposals under section 41(2) of the School Standards and Organisation (Wales) Act 2013”.
- 15 (13) Omit Schedules 6 to 8 (provisions about procedure and implementation of statutory proposals, rationalisation of school places and changes of category of schools).
- (14) In Schedule 22 (disposals of land) –
- (a) in paragraph 1, after sub-paragraph (1)(a) insert –
- 20 “(aa) any land acquired under paragraph 7 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section (1) of that Act or under Part 3 of Schedule 5 to that Act;”;
- (b) in paragraph 2, after sub-paragraph (1)(a) insert –
- 25 “(aa) any land acquired under paragraph 7 or 11 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013, under either of those paragraphs as applied by section (1) or (3) of that Act or under Part 3 of Schedule 5 to that Act;”;
- (c) in paragraph 2A –
- (i) after sub-paragraph (1)(a) insert –
- 30 “(aa) any land acquired under paragraph 7 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013, under that paragraph as applied by section (1) of that Act or under Part 3 of Schedule 5 to that Act;”;
- (ii) in sub-paragraph (1)(b) after “(a)” insert “or (aa)”;
- 35 (iii) in sub-paragraph (2)(a)(ii) after “(a)” insert “or (aa)”;
- (iv) in sub-paragraph (2)(b) after “(a)” insert “or (aa)”;
- (d) in paragraph 3 –
- (i) after sub-paragraph (1)(a) insert –

- 5 “(aa) any land acquired under paragraph 7 or 11 of Schedule 4 to the
School Standards and Organisation (Wales) Act 2013, under
those paragraphs as applied by section (1) or (3) of that Act or
under Part 3 of Schedule 5 to that Act;”;
- 5 (ii) in sub-paragraph (3) after “(a),” insert “(aa),”;
- (iii) in sub-paragraph (4)(c)(ii) after “this Act” insert “or under paragraph 7(6)
of Schedule 4 to the School Standards and Organisation (Wales) Act 2013”;
- (e) in paragraph 5—
- 10 (i) in sub-paragraph (1)(b)(ii) for “section 32(1)” substitute “section 82 of the
School Standards and Organisation (Wales) Act 2013”;
- (ii) in sub-paragraph (4)(c) after “alteration” insert “or regulated alteration”;
- (iii) in sub-paragraph (4A) after “(a),” insert “(aa),”;
- (iv) in sub-paragraph (4B)(d) after “alteration” insert “or regulated alteration”;
- (v) in sub-paragraph (6)(a) after “2A(1)(a),” insert “(aa),”;
- 15 (f) in paragraph 6—
- (i) in sub-paragraph (1) after “section 30(1)” insert “or section 81 of the School
Standards and Organisation (Wales) Act 2013”;
- (ii) in sub-paragraph (2)(a) after “section 30(2)” insert “or section 81(2) of the
School Standards and Organisation (Wales) Act 2013”;
- 20 (g) in paragraph 8—
- (i) in sub-paragraph (1) after “section 30(10)” insert “or section 81(11) of the
School Standards and Organisation (Wales) Act 2013”;
- (ii) in sub-paragraph (2) after “section 30(2)(a) to (d)” insert “or section 81(2) of
the School Standards and Organisation (Wales) Act 2013”;
- 25 (h) in paragraph 10 after sub-paragraph (1)(e) insert—
- “(f) “regulated alteration” has the same meaning as in Chapter 2 of
Part 3 of the School Standards and Organisation (Wales) Act
2013.”

Learning and Skills Act 2000

- 30 19 (1) The Learning and Skills Act 2000 is amended as follows.
- (2) After section 83(9) (area inspections) insert—
- “(9A) For provision on reporting on sixth forms found to be causing concern
in an area inspection, see sections 44C and 44E of the Education Act
2005.”
- 35 (3) Omit the following provisions—
- (a) sections 113 and 113A,

- (b) Schedules 7 and 7A,
- (c) paragraphs 84, 89 and 90 of Schedule 9.

Education Act 2002

- 20 (1) The Education Act 2002 is amended as follows.
- 5 (2) Omit section 72 (restructuring sixth form education).
- (3) In section 129(6)(b) (transfer of employment) after “1998” insert “or Part 3 of the School Standards and Organisation (Wales) Act 2013”.
- (4) Omit section 154 (establishment or alteration of maintained nursery schools).
- (5) Omit sections 191 to 193 (regional provision for special educational needs).
- 10 (6) In paragraph 5(2)(b) of Schedule 1 (incorporation and powers of governing body) for paragraphs (i) to (iii) substitute—
- “(i) the date on which proposals for discontinuing the school are implemented under Part 3 of the School Standards and Organisation (Wales) Act 2013,
 - 15 (ii) the date on which the school is discontinued under section 81 of the School Standards and Organisation (Wales) Act 2013, or
 - (iii) the date specified in a direction given under section 16(2) or 82(1) of the School Standards and Organisation (Wales) Act 2013”.
- 20 (7) Omit Schedules 9 and 10 (proposals relating to sixth forms and establishment of schools).
- (8) In Schedule 21 (minor and consequential amendments) omit paragraphs 98, 115, 116 and 126.

Education Act 2005

- 25 21 (1) The Education Act 2005 is amended as follows.
- (2) In section 28(4) (duty to arrange regular inspections of certain schools)—
- (a) in paragraph (b) for “section 30 of the School Standards and Framework Act 1998 (c31)” substitute “section 81 of the School Standards and Organisation (Wales) Act 2013”,
 - 30 (b) in paragraph (c) for “section 19 or 32 of that Act” substitute “section 16(2) or 82(1) of the School Standards and Organisation (Wales) Act 2013”.
- (3) Omit the following provisions—
- (a) section 46 (sixth forms requiring significant improvement);
 - (b) sections 68, 69, 70, 71 (school organisation);
 - 35 (c) Schedule 5 (sixth forms requiring significant improvement);
 - (d) paragraphs 7, 8, 13 and 14 of Schedule 12 (amendments relating to school organisation).

Education and Inspections Act 2006

- 22 (1) The Education and Inspections Act 2006 is amended as follows.
- (2) Omit section 54(1)(e) (pupil banding).
- 5 (3) In Schedule 3 (amendments relating to school organisation) omit paragraphs 14(b)(ii), 18, 20, 22 to 26, 33 to 36, 46 and 50.
- (4) In Schedule 14 (minor and consequential amendments) omit paragraphs 61 and 66.

Equality Act 2010

- 23 (1) The Equality Act 2010 is amended as follows.
- (2) In paragraph 4 of Schedule 11 (single-sex schools turning co-educational) –
- 10 (a) in sub-paragraph (2) for the words from “paragraph 22” to “1998” substitute “section 83 of, or Part 3 of Schedule 4 to, the School Standards and Organisation (Wales) Act 2013”,
- (b) omit sub-paragraph (5).

Education (Wales) Measure 2011

- 15 24 (1) The Education (Wales) Measure 2011 is amended as follows.
- (2) In section 13(b) (single governing body for federations) for the words from “Chapter 2” to the end substitute “Part 3 of the School Standards and Organisation (Wales) Act 2013 (school organisation) or in Part 3 of the School Standards and Framework Act 1998 (school admissions)”.
- 20 (3) Omit section 20 (minor and consequential amendments to the Education Act 2005).
- (4) Omit sections 26 to 30 (foundation schools).

PART 3

AMENDMENTS RELATING TO PART 5 (MISCELLANEOUS SCHOOLS DUTIES)

Education Act 1996 and orders made under it

- 25 25 (1) In section 512A(6) of the Education Act 1996 (transfer of functions under section 512 to governing bodies), omit from “and such” to the end.
- (2) In the Education (Transfer of Functions Concerning School Lunches) (Wales) Order 1999 (SI 1999/610), omit article 4.
- 30 (3) In the Education (Transfer of Functions Concerning School Lunches) (Wales) (No. 2) Order 1999 (SI 1999/1779), omit article 4.

Education Act 2002

- 26 In Schedule 21 to the Education Act 2002 (minor and consequential amendments) omit paragraph 110.

Education Act 2005

27 In section 103 of the Education Act 2005 (annual parents' meetings) omit subsection (2) and (3)(a)(ii).

Education and Inspections Act 2006

- 5 28 (1) The Education and Inspections Act 2006 is amended as follows.
- (2) Omit section 58 (code of practice as to relationships between local authorities and maintained schools).
- (3) In section 87 (power to charge for provision of meals) –
- 10 (a) in subsection (1), omit paragraph (b);
- (b) in subsection (2), omit paragraph (b).

Healthy Eating in Schools (Wales) Measure 2009

29 In section 8(2)(b) of the Healthy Eating in Schools (Wales) Measure 2009 (which provides for a new subsection (4A) to be inserted into section 512 of the Education Act 1996), for "7(5)" substitute "4".

15 *Education Act 2011*

30 In section 35 of the Education Act 2011 (duties in relation to school meals) –

(a) in subsection (2) omit paragraph (b);

(b) in subsection (3) omit paragraph (b).



Llywodraeth Cymru
Welsh Government

SCHOOL STANDARDS AND ORGANISATION (WALES) BILL

Explanatory Memorandum
incorporating the Regulatory Impact
Assessment and Explanatory Notes

April 2012

SCHOOL STANDARDS AND ORGANISATION (WALES) BILL

Explanatory Memorandum to the School Standards and Organisation (Wales) Bill

This Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the School Standards and Organisation (Wales) Bill introduced by me on 23 April 2012, would be within the legislative competence of the National Assembly for Wales.

Leighton Andrews AM

Minister for Education and Skills
Assembly Member in charge of the Bill

23 April 2012

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ANNEX 1 – Explanatory Notes

PART 1

1. Description

1.1 The School Standards and Organisation (Wales) Bill ('the Bill') sets out a number of proposals that will sharpen the accountability of schools by bringing together, updating and tightening standards and management. The Bill will reform the statutory process for school organisation so that decisions are taken at the local level wherever possible. Mainstreaming several grant funded programmes will improve the streamlining of current processes. Changing the way Governing Bodies hold their Annual Parents Meetings will provide a means of ensuring that such meetings are more flexibly offered in order to meet the needs of parents. Local authorities and schools will be given greater flexibility over the pricing of school meals. Lastly local authorities will be accountable for planning Welsh-medium provision by the placing of Welsh in Education Strategic Plans on a statutory basis.

1.2 The Bill also recasts and consolidates existing education provisions and makes progress in line with the development of a Welsh Statute Book.

2. Legislative background

2.1 The National Assembly for Wales has the legislative competence to make provision for and in connection with School Standards and Organisation by virtue of Schedule 7, subject 5 (education and training) and subject 9 (health and health services) of the Government of Wales Act 2006 (“GOWA 2006”).

2.2 Schedule 7, subject 5 of GOWA is reproduced below:

Education and training

5. Education, vocational, social and physical training and the careers service, Promotion of advancement and application of knowledge.

Exception—

Research Councils.

2.3 Schedule 7, subject 9 of GOWA is reproduced below:

Health and health services

9. Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Exceptions—

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

3. Purpose and intended effect of the legislation

3.1 In seeking immediate improvement in a number of areas the Welsh Government will through the School Standards and Organisation (Wales) Bill legislate in the following areas:

- Intervention in schools causing concern;
- School improvement;
- School organisation;
- Welsh in Education Strategic Plans;
- Annual parents meetings;
- School-based counselling;
- Primary school free breakfast initiative;
- Flexible charging for school meals.

3.2 School standards in Wales are too low and too variable. While examination results have been rising over the last decade, these performances lag behind other countries. In 2010 the Organisation for Economic Cooperation and Development (OECD) published its Programme for International Student Assessment comparing the performance of school systems across 65 countries. It was the second time Wales had participated in this study and it was clear that Wales is falling behind. Wales is currently below the OECD average for reading and mathematics.

3.3 The relative underperformance of the school system in Wales is worse for our more able students. Repeated Estyn inspections of schools and local authorities show a large variation in school outcomes: there is excellent school provision in Wales, but there is also systemic failure, with some schools and local authority education services in need of significant improvement. Thematic reviews from Estyn across a wide range of issues show a wide variation in practice across schools in Wales. In February 2011, the Minister for Education and Skills set out a 20 Point Action Plan for Education in Wales to raise standards and narrow the attainment gap. This Bill sets out the legislative components of that action plan to raise school standards in Wales.

Intervention in schools causing concern

3.4 Where schools are falling below the standard, whether it be an issue of educational performance or one of school governance, parents and students expect the appropriate action to be taken. Presently the procedures for local authorities and/or the Welsh Government to intervene in these schools, identified as 'causing concern' is set through various legislation.

3.5 Currently a school that is causing concern is identified by the local authority as part of their responsibilities for supporting and challenging their schools'

performance or by Estyn as part of their inspection process. Having identified that a school is cause for concern a local authority can issue a warning notice in relation to the following grounds to a governing body under the School Standards and Framework Act 1998 (SSFA 1998).

- the standards of performance of pupils at the school are unacceptably low or are likely to remain so unless the local authority uses its powers of intervention; or
- there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice the standards of performance at the school; or
- the safety of pupils or staff of the school is threatened; or
- the governing body has failed to comply with a provision of an order under section 122 of the Education Act (EA) 2002 (teachers pay and conditions) that applies to a teacher at the school or that the governing body of the school has failed to secure that the head teacher complies with such provision; or
- that the governing body have failed to secure that the head teacher of the school complies with teachers pay and conditions.

3.6 Should the governing body of the school fail to comply with the warning notice addressing the grounds for concern within a specified timescale the local authority may undertake the following courses of action:

- appointing of additional governors
- suspending the right to a delegated budget and/or
- applying to Welsh Ministers to replace the governing body with an interim executive board.

3.7 However, there are at present only a few local authorities in Wales that have issued warning notices to schools in these circumstances. This has led to a situation where too many schools are left in a position of concern for too long without the appropriate early action required.

3.8 This was underlined by Estyn's annual report of 2010/11 in which the Chief Inspector of Education and Training in Wales states "*in many local authorities, a few schools have been allowed to underperform over a long period of time, mainly because authorities do not use the full range of their powers to improve schools quickly enough*". This conclusion is supported through the findings of an evaluation of the impact of local authority intervention and support for schools causing concern undertaken by Estyn in 2009.

3.9 Recent informal consultation undertaken by the Welsh Government with the Welsh Local Government Association pinpoints that local authorities are reluctant to use their existing powers of intervention because they feel the current legislation to be unclear and ambiguous.

3.10 The law as it currently stands with regard to local authority intervention powers is, as previously mentioned, contained largely in the SSFA 1998. This legislation has over the years been amended resulting in numerous cross references

to other enactments making it very difficult for the reader to navigate their way through the powers. Some of those amendments were textual but not all, some of the amendments are quite complex in nature requiring detailed knowledge of various legislation.

3.11 There exists a confusing mixture of trigger points for the use of intervention powers, and as a consequence, it has become unclear and confusing when the respective powers of the local authority and Welsh Ministers to intervene in schools causing concern can be exercised. Simply put it has become increasingly difficult to accurately interpret the legislation resulting in a situation where it is unclear who should exercise its powers first – the local authority or the Welsh Ministers?

3.12 It is essential that local authorities are clear about their powers of intervention and the powers of intervention of the Welsh Ministers in order for them to be used decisively and effectively to bring about improvement in standards of education.

3.13 The School Standards and Organisation (Wales) Bill will for the first time bring together in one place existing provisions relating to:

- intervention by local authorities in the conduct of maintained schools which are identified as a cause for concern;
- intervention by Welsh Ministers in the conduct of maintained schools which are identified as a cause for concern;
- intervention by Welsh Ministers in local authorities in the exercise of their education functions.

3.14 In addition to this the Bill sets out to strengthen and reform those powers of intervention where necessary.

3.15 The provisions in relation to school intervention within the Bill are drafted to reflect the fact that it is wholly appropriate that the local authority will take action in the first instance. However should the local authority intervention prove unsuccessful or inadequate Welsh Ministers will also have the power to intervene. This reform of the current law draws together in one place all the powers of intervention and to provide the local authority and the Welsh Ministers with the same grounds for intervention.

3.16 The clarification, strengthening and reform of the current provisions through this legislation will raise school standards by ensuring that intervention by local authorities and the Welsh Ministers in schools causing concern is carried out in a timely and appropriate way, bringing about improvement in underperforming schools and closure of those schools which are judged to be irredeemable. The Bill will remove the current ambiguity and confusion around the following areas.

- the grounds for intervention;
- the process for intervention;
- the point at which intervention can take place; and
- what can be done by way of intervention.

3.17 If local authorities are to be timely and effective in their intervention it must be clear what the grounds for such an intervention are. Therefore the Bill will restate and remove unnecessary over complication of the grounds.

Ground 1 It will no longer be a requirement of a local authority to demonstrate the standards of performance are 'likely to remain unacceptably low' as is currently the case. The Welsh Government considers the fact that they are already unacceptably low sufficient grounds for intervention.

Ground 2 The words 'which is prejudicing, or is likely to prejudice, standards of performance' are removed. This will provide a better basis for local authorities to consider issuing warning notices sufficiently early and before the situation has deteriorated to the extent where it is damaging performance.

Ground 3 The behaviour of pupils at the school or any action taken by those pupils or their parents is severely prejudicing or is likely to prejudice the education of the pupils at the school.

Ground 4 This corresponds to the ground for intervention in section 15(2)(a)(iii) of the SSFA 1998

Ground 5 This regards the failure or likely failure of the governing body or head teacher to comply with a duty under the Education Acts and restates the ground for intervention in section 497 of the Education Act 1996.

Ground 6 The governing body or head teacher has acted, or is proposing to act unreasonably in the exercise of his/her functions under the Education Acts. This corresponds to the ground for intervention in section 496 of the Education Act 1996.

Grounds 5 and 6 together with the direction power in section 17 and 28 of the Bill will replace the existing direction power in section 496 (Ground 6) and 497 (Ground 5) of the Education Act 1996. Should ground 5 or 6 exist a local authority may use all of its powers of intervention. As it currently stands the SSFA 1998 only provides fairly draconian powers such as to appoint additional governors, suspend the schools budget or appoint an interim executive board. This means that local authorities currently have no power to simply direct a governing body to do something if the governing body is acting unreasonably or is in breach of its duties. This is inappropriate as it is our intention that local authorities should be the first to take action in schools causing concern.

Grounds 7 and 8 relate to warning notice/s issued by Her Majesty's Chief inspector of Education and Training in Wales under the EA 2005 and these replicate the grounds for intervention in section 15(4) and (6) of the SSFA 1998.

3.18 Similarly the process for intervention and the issuing of a warning notice should any of the above grounds (1-6) exist is also overly complicated. Under current

legislation for example there is a requirement to issue a warning notice about a warning notice. Whilst it is good practice to engage with the school at an early stage it is excessive to specify prior dealings as statutory conditions for the issue of a warning notice. These provisions have been simplified to better reflect the fact that the trigger for intervention is the failure on the part of a governing body to respond adequately to a notice.

3.19 Where the present legislation provides no uniform approach to the time limits for intervention action to be taken, the Bill will clarify and simplify this by setting the same window for action by authorities in respect of all powers. It is a flexible window based on the authority keeping the situation under review and requiring them to be satisfied that the issues have been dealt with to its satisfaction or that exercise of its powers would not be appropriate for any other reason before closing the window. The same approach has been applied to the time limits for the powers intervention of the Welsh Ministers.

3.20 The Bill also contains a new power enabling the local authority to require a weak school to collaborate with another school or to work with a partner on school improvement. This might involve contracting with another party for the provision of advisory services to the governing body; collaborating with the governing body of another school; collaborating with a further education college or creating or joining a federation. This form of collaboration will provide an opportunity for the school to address the grounds for concern and avoid what may be a more serious intervention by the authority.

3.21 The Bill replicates the existing power for the local authority to appoint additional governors however these provisions have been amended so that this power is now the same for local authorities and the Welsh Ministers. Under the SSFA 1998 where local authorities appoint such governors there is a power for the appropriate diocesan authority or the body that appoints foundation governors to appoint further governors. When the Welsh Ministers appoint such governors there is no such power to appoint additional governors. Therefore, the Bill removes this difference so that the power of the appropriate diocesan authority or the body that appoints foundation governors is removed. Where the school is causing concern and there has been a failure in the governance and management of the school it is not appropriate for this power to remain.

3.22 To ensure that local authorities have all the information and help required to interpret the new legislation the Bill will also create a new power for Welsh Ministers to issue statutory guidance on school intervention.

3.23 The statutory guidance on school intervention will set out clearly the procedures to be followed by local authorities in ensuring that schools causing concern make the necessary changes as early as possible. The guidance will provide clear advice as to how local authorities and the Welsh Ministers should intervene in a timely, appropriate and consistent way to ensure that underperforming schools can make the required progression. It will incorporate existing guidance relating to warning notices and governing bodies currently set out in the 1999 Code of Practice on Local Education Authority School Relations. The purpose in doing so is to ensure local authorities are clear about the powers that exist and the

circumstances in which to use them encouraging better use of these powers. The guidance will further set out:

- expectations for use of outcomes of Welsh Government analyses (banding and floor targets) to make clear that local authorities are expected to consider banding and other forms of Welsh Government analysis and take action where schools are identified in low bands, where evidence indicates that outcomes are falling or where minimum standards (floor targets) defined by the Welsh Government are not being met. Schools will be expected to have due regard to the All Wales Core Data Set in drawing up their targets for improvement and School Improvement Plan;
- expectations on local authorities in relation to school improvement plans to ensure that the local authority is satisfied that they are sufficiently robust and consistent with the new School Improvement Guidance or that the local authority requests the school to revisit its plan should the local authority determine it is not sufficiently robust.

3.24 Local authorities, governing bodies and head teachers of maintained schools must follow the guidance unless they have a very good reason for departing from it. Where they consider there is a good reason not to follow the guidance or decide on an alternative policy they must issue a policy statement setting out how they propose to exercise functions differently. However Welsh Ministers may direct the school authority to take any action they consider appropriate should they consider that the authority's alternative policy is not likely to improve the standard of education provided at the school.

3.25 Failure to legislate in this area would prevent a consolidation and clarification of the law in respect of these schools. The law as currently drafted would remain unclear and difficult for local authorities to navigate. Local authorities would remain unclear about their powers of intervention.

3.26 The current failings as identified by Estyn would perpetuate the current ineffectual issuing of warning notices and intervention. Further Welsh Ministers will not have the necessary powers to issue statutory guidance on schools causing concern and there will be no corresponding duty on local authorities to comply with the non-statutory guidance.

3.27 The Welsh Government considers early intervention in those schools causing concern to be paramount in raising standards in schools in Wales.

School Improvement Guidance.

3.28 Good practice teaching and learning processes and techniques are not applied consistently across all schools. This has been found repeatedly in Estyn inspections and thematic reviews and is the major contributing factor to the variations found in school standards (eg examination results) between schools with similar socio-economic inputs. The aim of the Statutory School Improvement Guidance is to accelerate the process of school improvement across Wales and

bring more consistent performance across all schools to ensure that all learners can benefit from the most effective teaching and learning and achieve their potential.

3.29 There is evidence from inspections and examination outcomes that some schools in Wales are consistently achieving excellent results for their learners whilst other similar schools, where learners are in similar socio- economic circumstances are not achieving the same results. These differences in school performance have been highlighted by the process of school banding, the Welsh Government's system for the transparent assessment of school performance, ensuring support is targeted where it is needed most. The banding process has been accompanied by a careful analysis of data and evidence about priorities for improvement for the lower performing schools that have been conducted by the Welsh Government in partnership with local authority consortia across Wales.

3.30 The Welsh Government School Standards Unit is working to develop a systematic methodology to identify best practice and support its effective implementation into other schools. We are also identifying a range of high quality materials and resources to support teachers and help them develop their practice focusing on national priorities of literacy, numeracy and reducing the impact of poverty on attainment. Such best practice material will be developed in consultation with local authorities and schools. This will be published on the Learning Wales website when it is launched in September 2012. We have worked with practitioners to ensure that these materials are relevant and engaging so practitioners will use them to improve their teaching. The purpose of the school improvement guidance clauses in this Bill would be to place such guidance on a statutory basis.

3.31 Inspectorate research has suggested that best practice does not spread quickly. Some schools are reluctant to change their approaches, even when they are less successful than other settings. Currently, the Welsh Ministers do not have the power to direct the specific practice or techniques that must be used in a school which chooses to ignore the evidence that the approaches they are using are not providing the best outcomes for their learners. This needs to include what the benefit of having these powers will mean, i.e earlier intervention, consistency of approach etc.

3.32 The statutory guidance will set out clearly the procedures to be followed by local authorities in ensuring that schools causing concern make rapid improvement and the role of local authorities in identifying and intervening in such schools. Local authorities, governing bodies and head teachers of maintained schools must follow the guidance unless they have a very good reason for departing from it.

3.33 Where they consider there is a good reason not to follow the guidance or decide to implement an alternative policy they must issue a policy statement setting out how they propose to exercise functions differently.

3.34 If the Welsh Ministers consider that the authority's alternative policy is not likely to improve the standard of education provided at the school to which the policy statement relates they may direct the school authority to take any action Welsh Ministers consider appropriate to ensure the exercise of functions by the authority in accordance with the school improvement guidance.

3.35 The powers to issue statutory school improvement guidance have been purposely drafted to be broad based. They will enable the Welsh Ministers to issue guidance targeted at a number of levels namely, local authority; governing bodies of maintained schools and head teachers. Guidance may be directed at a specific school or schools in a particular group or individual local authorities working in a Consortia. Different guidance may be issued on specific topics i.e. education at a particular key stage; guidance will affect consortia regions; local authorities; schools; governing bodies; head teachers; practitioners; learners.

3.36 The statutory guidance will:

- (a) provide advice as to how local authorities and the Welsh Ministers should intervene in a timely, appropriate and consistent way to ensure that underperforming schools make rapid improvement. The guidance will also incorporate existing guidance relating to warning notices and governing bodies currently set out in the 1999 Code of Practice on Local Education Authority School Relations. The purpose in doing so is to ensure local authorities are clear about the powers that exist and the circumstances in which to use them encouraging better use of these powers.
- (b) set out expectations for use of outcomes of Welsh Government analyses (banding and floor targets) to make clear that local authorities are expected to consider banding and other forms of Welsh Government analysis and take action where schools are identified in low bands, where evidence indicates that outcomes are falling or where minimum standards defined by the Welsh Government are not being met. Schools will be expected to have due regard to the All Wales Core Data Set in drawing up their targets for improvement and School Improvement Plan.
- (c) set out expectations on local authorities in relation to school improvement plans to ensure that the local authority is satisfied that they are sufficiently robust and consistent with the new School Improvement Guidance or that the local authority requests the school to revisit its plan should the local authority determine it is not sufficiently robust.
- (d) as the evidence from the banding and stocktaking analysis develops we may identify areas where evidence is overwhelming that particular practices or techniques are far more successful than others.

3.37 In these cases we would wish to use the School Improvement Guidance to set out proven techniques and specify the schools in which it should be used. Examples of this might include specifying the mostly effective literacy “catch up” schemes, or the best behaviour management techniques.

3.38 If the legislation is not made there is a risk that we will not have powers to direct schools to take action that evidence shows would clearly be in the best interest of their learners. This would disadvantage the learners and slow school improvement across Wales.

3.39 There is also an efficiency benefit as publication of guidance on the best school improvement techniques will avoid many schools “reinventing the wheel” or sticking with techniques that others know are ineffective, this will also speed up the school improvement process.

School organisation

3.40 Successful intervention in schools and statutory guidance aimed at driving up standards needs to be underpinned by appropriate systems of school organisation. The current process for determining school organisation proposals requires reform so that those systems are shaped and decided at the local level.

3.41 The SSFA 1998 sets out the basis upon which proposals to establish, alter, change the category of, or close schools can be made, and provides local authorities, the governing bodies of voluntary and foundation schools and other persons with varying powers to make such proposals. The powers apply to mainstream and special schools funded by a local authority. The SSFA 1998 provides for regulations to specify how these powers can be applied and the process to be used to carry out these powers.

3.42 There are three key sets of regulations –

- The Education (School Organisation Proposals) (Wales) Regulations 1999;
- The Education Maintained Special Schools (Wales) Regulations 1999;
- The Change of Category of Maintained School (Wales) Regulations 2001.

3.43 There are also two guidance circulars:

- Circular 9/99 SSFA 1998 - Organisation of School Places, which describes the procedures for publishing and deciding proposals;
- Circular 21/09 School Organisation Proposals, which sets out the policy considerations that proposers need to take into account when developing a proposal and the criteria Welsh Ministers apply in deciding the proposals that they are required to determine.

3.44 The SSFA 1998 provides that local authorities or, as the case may be, governing bodies and other promoters, must publish proposals and give any person the opportunity to object to such proposals. If any objections are received, the proposals must be determined by the Welsh Ministers. The Welsh Ministers may approve the proposals (with or without modification) or reject them.

3.45 The Welsh Ministers have powers under the Learning and Skills Act 2000 (LSA 2000) to bring forward proposals to establish, alter or discontinue post-16 education in schools. The process for publishing and determining these proposals is similar to that relating to proposals made under the SSFA 1998 and is set out in the School Organisation Proposals by the National Assembly for Wales Regulations 2004.

3.46 The current process for making changes to school organisation is as follows:

- the local authority, governing body or promoter (“the proposer”) prepares the proposal - collating information, applying the key considerations set out in Welsh Government guidance, and undertaking informal soundings;
- the proposer undertakes consultation, as required by law, with key interest groups - this usually involves the issue of a consultation document and the holding of public meetings;
- the proposer analyses the responses to consultation and decides whether to proceed with the proposal;
- if so, notices are published which set out the proposal and allow 1 month for any individual or organisation to lodge an objection;
- if there are no objections the proposer decides whether or not to proceed with implementation and has 3 months in which to make this decision;
- if there are any objections, the decision on the proposal becomes the responsibility of Welsh Ministers and the proposer has 2 weeks to submit, to the Welsh Ministers, their responses to the objections;
- Welsh Ministers consider the proposal in the light of relevant factors set out in guidance together with the objections, the proposer’s responses, and Estyn’s assessment of the educational merits of the proposal;
- Welsh Ministers issue their decision - usually between 4 and 6 months from receipt of the proposer’s response to objections; and
- if the proposal is approved the proposer has a legal duty to implement it.

3.47 There are a number of negative consequences arising from the current system.

3.48 Presently, all proposals which receive objections must be determined by the Welsh Ministers. On average, over the last 5 years, this has amounted to 17 proposals per year, and in both 2009-10 and 2010-11 the figure was 22. Given that responsibility for planning and providing school places rests with local authorities and not the Welsh Government, it is considered that decisions should, in the vast majority of cases, be made at the local level rather than by the Welsh Ministers.

3.49 The process for school organisation currently takes too long and the involvement of the Welsh Ministers in every proposal which receives objections adds an unnecessary level of bureaucracy, and sometimes causes significant delay. Such delays significantly hamper the ability of local authorities seeking to make changes which will lead to a better use of the resources available for education. Most determinations made by the Welsh Ministers take several months, starting from the date on which the statutory notice relating to the proposal is published, whilst in some very complex cases, proposals have taken over 6 months from this point to determine.

3.50 Generally speaking, proposals which attract objections (even if relatively uncontentious overall) will take at least 6 months to determine from the point that a decision to consult is taken to the point when the Welsh Ministers issue their

decision. Limited changes which shorten the timetable for the lodging and submission of objections by 6 weeks (made through the amendment of existing regulations on procedures) came into effect in March 2011. However, a greater reduction in timescales is considered necessary where opposition to proposals is limited.

3.51 The current legislation, which allows a single objector without a direct interest in a school to cause a referral to Welsh Ministers, is inappropriate. This provision can result in delays and uncertainty for local parents and children directly involved with a school, whether or not they support the proposed change, and this is clearly undesirable.

3.52 The closure of schools which have few or no pupils is subject to the same legislative process as, for example, would be the case with a complex reorganisation of several secondary schools. It is considered that this process is unjustifiably protracted in the case of schools which are no longer educationally or financially viable. In the case of schools with no pupils, the requirement to follow the same legal process as for schools which have pupils on roll, risks bringing the whole system into disrepute.

3.53 Whilst many local authorities engage well with stakeholders and explain their intentions clearly when they consult on proposals, the current statutory guidance lacks sufficient detail to ensure that there is consistency in the approach taken to consultation. Furthermore, both proposers and interested parties are sometimes unclear about what constitutes good practice and what local people can reasonably expect from consultation. A Code on school organisation with which promoters would have to comply, and which included a set of minimum consultation requirements, would help to bring clarity to, and promote confidence in, the process.

3.54 The Bill repeals the various elements of existing legislation on school organisation in Wales and replaces them with a single, comprehensive legislative framework. Much of the existing legislation has been restated, albeit in a modified form where this is considered appropriate for the purposes of clarity or simplicity. Furthermore, new arrangements are included which are designed to reflect the impact of school organisation proposals in an area by ensuring that decisions are taken at an appropriate level, in accordance with the level of concern expressed by those most involved in a locality. They will ensure that the vast majority of proposals are determined at the local level and in many instances the process should be swifter.

3.55 Specifically, the Bill introduces the following significant changes to the way in which school organisation proposals are determined:

- The Bill provides for the introduction of a statutory Code to deal with consultation and other arrangements, modelled on best practice. The advantages of producing a Code are that such a document can provide a clear explanation of the law which is accessible to both promoters and to the public, facilitating understanding and compliance. It will set standards for procedures, and compliance with these would be required. Currently promoters have only to “have regard to” statutory

guidance. The introduction of a Code with which promoters must comply will provide a more robust means of ensuring that proposers undertake procedures correctly. It is anticipated that the draft Code on school organisation will be laid before the National Assembly, subject to the approval of the Bill, shortly after Royal Assent. The provisions included in the Act, the requirements of the Code and the statutory guidance are expected to come in to force in autumn 2013 and will apply to any school organisation proposal published after that date.

- Instead of a situation where all proposals which receive objections are referred to the Welsh Ministers, only those proposals which receive an objection from a local authority (or in the case of a school with a religious character, the relevant religious body) or which are connected solely with the removal or establishment of sixth form provision (in the light of the Welsh Ministers statutory responsibilities in relation to post-16 educational provision and funding) will be referred to the Welsh Ministers.
- Proposals which receive at least 1 objection from the following affected persons; school's governing body, school council, Further Education Institutions (in the case of secondary schools), the appropriate religious body for a school, Assembly Member or Member of Parliament, or by 10 or more persons with a direct interest in a school (including pupils, parents and staff) will be referred to a local determination panel (LDP) – bodies set up at the local authority level specifically for this purpose. These bodies will be comprised of five persons who may either be local authority members without prior connection to a proposal, or independent lay persons. They would, in compliance with the Code, decide whether the proposal should be allowed to proceed and make public the basis for their decisions. They would provide an extra level of scrutiny at a local level by individuals familiar with local conditions.
- Proposals which do not receive objections, or the level of objection is insufficient to trigger referral to the Welsh Ministers or LDPs, will be determined by the proposers.
- In the case of schools which have fewer than 10 pupils on roll, the closure process followed will be shorter. There will be no requirement for consultation prior to the publication of statutory notices, and irrespective of whether objections are received, the matter will be determined by the proposer.

3.56 The Bill also sets out those changes to schools which will require the publication of proposals. These are based substantially on the existing regulations. However, it will in future be possible for a local authority to propose a decrease in the size of a foundation or voluntary school which has no religious character as well as an increase.

3.57 The school organisation provisions included in this Bill are intended to form a coherent approach and would deliver the following policy objectives:

- a greater number of locally determined proposals for reorganisation;
- fewer proposals requiring third party determination as a result of objections;
- where proposals do require third party determination, a process which is much swifter and for the most part conducted at the local level;
- a consultation and determination process which is consistently applied, fully understood and commands public confidence and trust; and
- a bringing together, in one place, of all substantive law on school organisation in Wales.

3.58 Overall the provisions would ensure that where school reorganisation is necessary in order to maximise learning opportunities, improve the quality of provision and create a system of 21st century schools, it happens more efficiently and effectively. In doing so, the proposals will contribute towards securing the best education possible for children.

3.59 Failure to legislate in this area risks continuing with a situation where the Welsh Ministers decide a high proportion of school organisation proposals. The Welsh Government considers this inappropriate and would consider these issues far better dealt with at a local level. Furthermore, it means that proposals which receive limited local opposition, or which involve the closure of schools with few or no pupils, could be subject to unnecessarily long delays. Finally it would prevent the introduction of a Code on School Organisation which could be used to embed good practice and ensure consistency across Wales.

3.60 Subject to the views of the Assembly and the approval of the Bill, we anticipate that regulations would come into force in September 2013.

Welsh in Education Strategic Plans

3.61 The *Welsh-medium Education Strategy*¹ and supporting implementation programme sets out the national strategic direction for improving the status and planning of Welsh-medium education. The vision of the Welsh Government is to have an education and training system that responds in a planned way to the growing demand for Welsh-medium education, reaches out to and reflects our diverse communities and enables an increase in the number of people of all ages and backgrounds who are fluent in Welsh and able to use the language with their families, in their communities and in the workplace.

3.62 The Strategy includes five and ten-year targets to ensure more:

- a. seven-year old children being educated through the medium of Welsh;

¹ Welsh Government (2010) *Welsh-medium Education Strategy* – available at <http://wales.gov.uk/topics/educationandskills/publications/guidance/welshmededstrat/?jsessionid=Yc1lPjYS0hG35WHQvZD8fxTlydmwqGFnkP5vz0MtT6wS82vQfZ4Jl275472671?lang=en>

- b. learners continuing to improve their language skills on transfer from primary to secondary schools;
- c. learners studying for qualifications through the medium of Welsh;
- d. learners aged 16 to 19 studying subjects through the medium of Welsh; and
- e. learners with higher-level skills in Welsh.

3.63 Evidence gathered in the preparation of and consultation upon the draft Welsh-medium Education Strategy in 2009, showed the patchy nature of Welsh-medium and bilingual provision throughout Wales. The evidence indicated that planning for Welsh-medium education was not robust and systematic in a number of local authority areas. The final published Strategy acknowledged that, based on the evidence, there was “...a need for strategic planning to facilitate growth and ensure that there is more coherent development and that needs are considered at the start of policy developments in a coordinated way.”

3.64 In December 2011, local authorities submitted their first Welsh in Education Strategic Plans (WESPs) to the Welsh Government, to detail how each authority will achieve the outcomes and targets set out in the Strategy. The WESPs (which are currently non-statutory) provide the means for the Welsh Government to monitor the way in which local authorities respond and contribute to the implementation of the Welsh-medium Education Strategy. WESPs are considered to be a key vehicle for creating an improved planning system for Welsh-medium education by:

- ensuring that Welsh-medium education is at the heart of local authority planning considerations;
- planning for extending provision where needed;
- reconfiguring the support service by moving away from the traditional roles of *athrawon bro*², and towards a re-focused training and mentoring service;
- ensuring the delivery of Welsh-medium support services on the basis of consortia in the near future;
- improving standards and extending the use of Welsh by children and young people; and
- demonstrating progress against local measures agreed with local authorities to reflect the specific targets in the Welsh-medium Education Strategy.

3.65 It is intended that activity undertaken by local authorities, schools and other learning providers under the auspices of the WESPs will contribute to the achievement of the key outcomes of the Strategy (outline in paragraph 3.62) together with the following two outcomes, introduced in the current Guidelines for the WESPs:

- improved Welsh-medium provision for learners with additional learning needs; and

² The Athrawon Bro service is a specialist team of Welsh language teachers working in schools and with teachers

- improved workforce planning and enhanced continuous professional development opportunities.

3.66 Planning for Welsh-medium education is not currently robust and systematic in a number of local authority areas.

3.67 In an attempt to formalise planning, the Welsh Language Board has been using its powers under the Welsh Language Act 1993 to require local authorities to draw up a Welsh Education Scheme (WES). The WES concentrate to a great extent on ensuring sufficient places for children whose parents want to choose Welsh-medium education.

3.68 However, despite the introduction and use of WES, the issues with inadequate planning still remain. These WES, although having a statutory basis, have not prompted sufficient change, mainly because of inherent weaknesses. In particular, they were:

- a. introduced as part of a general language scheme rather than through legislation as specific educational schemes;
- b. agreed by an Assembly Sponsored Public Body (ie the Welsh Language Board) rather than approved by the Welsh Government;
- c. not aligned with national targets; and
- d. not flexible enough to accommodate new educational policy developments.

3.69 In addition many of the individual WES became obsolete after their original time period as local authorities were slow to prepare and submit revised schemes.

3.70 From April 2012 the Welsh Language (Wales) Measure 2011, amongst other matters abolishes the Welsh Language Board. The WES will, therefore, cease to exist.

3.71 Other planning systems also sought to bring rigour to planning for Welsh-medium educational provision. For example, the Children Act 2004 requires Children and Young People's plans (CYPPs) to be prepared. The supporting guidance for these stipulated that local authorities should "*set out in the CYPP their intentions in respect of Welsh-medium service provision*". However in practice very little was included in response to this requirement in all but a few plans submitted by local authorities, because of the wide-ranging nature of such plans.

3.72 Overall, the picture is therefore one of catch-up: local authorities attempting to find and allocate the requisite resources for sufficient Welsh-medium school places in an *ad hoc* manner. With some exceptions, it is apparent that the key elements of effective planning are fragile, and indeed in some cases absent.

3.73 The Bill seeks to build upon the current non-statutory WESPs by moving them to a statutory footing. The Bill will place a duty upon local authorities to consult on, produce and publish a Welsh in Education Strategic Plan that will be submitted for approval of, and monitoring by, Welsh Ministers. These will be 3 year plans and reviewed on an annual basis.

3.74 Each WESP must contain:

- the local authority's proposals on how it will carry out its education functions to improve the planning of the provision, standards and teaching, of Welsh medium education, in its area;
- the local authority's targets for improving provision, standards and teaching of Welsh medium education; and
- a report on the progress made to meet targets set out in previous plans.

3.75 The plan must be submitted to the Welsh Ministers who may approve it (with or without modifications) or reject it and prepare another plan in its place.

3.76 The Bill provides the Welsh Ministers with powers to make regulations about WESPs, to make further provision about:

- the form and content of a plan;
- the timing and duration of a plan;
- keeping a plan under review and its revision;
- consultation during the preparation of a plan;
- the submission of a plan for approval;
- when and how to publish a plan.

3.77 Regulations will also set out how and in what circumstances the Welsh Ministers may require a local authority to carry out an assessment of the demand among parents in its area for Welsh-medium education.

3.78 In addition to the outcomes expected by delivery of the Strategy (and the WESP additional outcomes) above, we expect that the proposals in the Bill would result in:

- the establishment of an improved local authority planning system for Welsh-medium education. The main result of this will be greater coherence and consistency in the provision of Welsh-medium school places to fulfil projected need or demand in each locality and across regions;
- introduction of WESPs as the main mechanism for taking forward the national strategic direction for Welsh-medium education and provide accountability to Welsh Ministers;
- publication of regular annual data and reports on progress on national targets for Welsh-medium education by local authorities;
- more opportunities for learners to access Welsh-medium education; and
- more learners with higher-level skills in Welsh.

3.79 Should Welsh in Education Strategic Plans not be placed on a statutory footing, there would be no effective means of enforcement on local authorities to prepare and implement a Plan. As a result, it is likely that the fragmented and

reactive approach to the planning and provision of Welsh-medium education would continue. Additionally a statutory planning system for Welsh-medium education (Welsh Education Schemes under the Welsh Language Act 1993) would be replaced by a non-statutory system.

3.80 Subject to the views of the Assembly and the approval of the Bill, we anticipate that regulations would come into force in December 2013, and that it would be a statutory requirement for local authorities to submit WESPs for implementation from 1 April 2014 in compliance with the regulations.

Annual Parent Meetings

3.81 There are processes within schools that the Welsh Government considers to be burdensome or unnecessary they will be removed or amended to meet the commitment for additional front line resources.

3.82 The current requirement for governing bodies to hold an annual meeting with parent/carers is an area the Welsh Government considers unnecessary and burdensome. Whilst it is important that parents have the right and ability to engage with the governing body of their school the requirement to have such a meeting arranged every year, even when not required or are in the main not attended, is considered overly burdensome for governing bodies.

3.83 For some years the Welsh Government has received representations from stakeholders requesting that the annual meetings with parents/carers should be abolished for these very reasons.

3.84 However parents are major stakeholders in the school community who have a clear and strong interest in their child's education, so to completely remove the right of parents access to school governors would clearly be wrong. The Welsh Government is therefore committed to ensuring that governing bodies actively engage with parents and remain accountable by providing them with information and opportunities to discuss and have an input into the way schools are run.

3.85 Currently parental engagement can be achieved in a number of ways. School governing bodies are required in law to provide parents with an annual report. This includes information such as comparative reports on school performance at the end of Key Stage assessments published by the Welsh Ministers, attendance and absence figures and information about the curriculum and the organisation of the school and teaching methods.

3.86 Head teachers are also required to provide parents with a report on their child's progress including details of their child's achievements and progress in each area of learning. Schools also have to provide a school prospectus which gives parents general information about the school such as pupil numbers, policies and information on performance. As well as this written information, governing bodies are also required to hold an annual meeting with the parents of registered pupils. The purpose of that meeting is to provide parents with an opportunity to discuss with the governors, the manner in which the school is, or to be, conducted and of any other matter relating to the school.

3.87 In addition to these statutory requirements schools will often arrange for informal 'evenings' where parents/carers can meet members of staff to discuss their child's progress.

3.88 Regulations surrounding Annual Parents' Meeting has some degree of flexibility as to when a meeting is held during the school year, but meeting dates are set at the discretion of the governing body and may not be beneficial or timely for parents who may wish to discuss a specific matter with the governing body at the time it occurs. The annual parents meeting may be planned for later in the school year, in which case the issue at hand and any discussions may therefore lose impact.

3.89 The annual parents' meeting involves a time commitment from the governors including the school staff who are also governors and the clerk to the governing body to take any minutes. There may also be a time commitment for someone, possibly a caretaker, to set out the room for the meeting and make other practical arrangements.

3.90 Representations received by the Welsh Government indicate that in many schools the parent governors attending the annual meeting outnumber the parents. Evidence suggests that for whatever reason, many parents seem to be indifferent to the work of the governing body and that they judge the school by the experiences of their children rather than the more abstract things, such as the issues covered in the governors' annual report or the general conduct of the school.

3.91 However, where they do attend these meetings it provides an opportunity for the governing body to discuss issues and canvass the views of parents. It also gives a stronger voice and a direct influence over what is happening in the school and what the school is doing for parents and pupils.

3.92 The Welsh Government has carefully considered the position of Annual Parents Meetings. Whilst it is important that parents have access to the governing body it is just as important that these meetings are timely and sought after by parents. Under the current arrangements this is clearly not the case and in response to this the Bill proposes the following:

- the parents of 10% of registered pupils in a secondary school or the parents of 30 registered pupils, whichever is the lower or the parents of 10% of registered pupils in a primary school or the parents of 10 registered pupils, whichever is the lower would need to request a parents meeting to the chair of governors.
- On receipt of a request the governing body would be required to write to all parents informing them that a meeting was going to be held on a particular date to discuss issues about the school.
- The governing body will be required to publicise the new arrangements in their school prospectus, and make it clear that parents may request up to three meetings per year.

- The Welsh Ministers will issue statutory guidance on these proposals

3.93 The benefit of these proposals is that there would be no obligation on governing bodies, unlike at present, to hold a meeting with parents unless there was a request for such a meeting by a set quorum of parents. Based on current evidence from discussions with local authority officers and correspondence received, it is probable many schools would not be asked for such a meeting. However, in schools where there is a major issue such as staff redundancies or leadership and staffing problems, this provision would make it possible for parent to discuss how these circumstances impact on their children's education as and when they are most relevant.

3.94 Failure to legislate in this area would mean the continuation of the current system for governing bodies, having to hold or arrange a meeting every year. It would also result in parents not always having the access to a timely and/or sufficiently long period to address issues of concern with school governors.

3.95 The current system does not provide as it stands an efficient use of parents or governors time, the proposed legislation will allow parents to engage with school governors at the appropriate time. Additionally should a governing body still wish to engage with parents as they currently do they could continue to do so.

Reducing Bureaucracy

3.96 The following proposals within the Bill aim to reduce bureaucracy, streamline processes and give greater flexibility.

3.97 The Front Line Resources Review completed in June 2011, was designed to reduce the administrative burden across the education system, in order to release funding for front line delivery. The Front Line Resources Review One Year on Report suggested that some specific grants be amalgamated but also recommended more general work to simplify the grants system and transfer some grants into the Revenue Support Grant as appropriate.

3.98 The 'Protocol on Hypothecated Grants' between the Welsh Government and the Welsh Local Government Association contains an expectation that ring-fenced grants will operate only for a limited period whilst new services are being set-up and, that over time, the funding will move to the Revenue Support Grant (RSG).

3.99 In line with the commitment and to simplify and reduce bureaucracy the Bill makes provision to support the transfer of two elements of specific grant funding namely, provision of primary free school breakfast and school counselling to the Revenue Support Grant (RSG). These demand led budgets currently require continual assessment by the Welsh government of all 22 local authorities spending in this area and yearly payments based upon this. By managing the funding at local level local authorities would be able to establish the level of need in individual schools and make decisions based on local knowledge.

School Based Counselling

3.100 Following the publication of the National Strategy for School-based Counselling in 2008, counselling services have been established in each local authority area. Currently a service is provided in all secondary schools managed by the local authority. The service is intended to support all young people receiving secondary education and also pupils in their final year of primary education, irrespective of whether they are registered pupils at a school or not.

3.101 Counselling is one of a range of services that help to support the health, emotional and social needs of pupils and leads to a healthy school culture. Early and easy access to counselling in schools can prevent mental health problems developing or becoming more serious, and can build up trust and confidence to enable young people to access more specialist services if required. The school counselling service support is available in secondary schools and to those in their final year of primary education.

3.102 The independent evaluation of the Welsh School-Based Counselling Strategy July 2011 (Social Research: Doc Number 23/2011)) recommended that the Welsh Government consider rolling out the Strategy to all pupils receiving primary education (year 5 and below) in an age appropriate form. The Welsh Government is currently considering school-based counselling in primary schools (year 5 and below).

3.103 To enable the Welsh Government's policy intention to be achieved on the transfer of the specific grant funding to the RSG the Bill will make the following provision:

- local authorities will be required to make reasonable provision for an independent counselling service to be provided to: pupils receiving secondary education or year 6 primary education at a school in its area; other persons aged 11 to 18 who belong to the authority's area and such other persons receiving primary education as the Welsh Ministers may set out in regulations.
- the counselling service must be independent of the school that provides education to the young person receiving counselling.
- Welsh Ministers will be able to issue guidance regarding the provision of school-based counselling to which local authorities must have regard.
- local authorities will be required to provide a counselling service on the site of each school they maintain that provides secondary education. They may provide additional counselling services at other locations should they wish to do so.
- Welsh Ministers will be able to make regulations requiring local authorities to provide an independent counselling service at other locations. For example, to require a counselling service to be provided on the site of a primary school.

- Welsh Ministers will be able to request information about the counselling service from the local authority;

3.104 Duties on local authorities within the Bill will ensure that young people who receive secondary education and year 6 primary education continue to have access to this type of support within a framework of safe and effective practice. The service will continue to be available to all young people aged 11-18 irrespective of the kind of school that they attend or whether they are registered at a school. It would therefore include persons who attend out of school provision, or are home educated or attend an independent school. This will also include students in further education who may not be able to access counselling via their further education provider.

3.105 Provision within the Bill is also made to enable the Welsh Ministers to give effect to any future policy intention to extend counselling services to other categories of persons, for example primary pupils in year 5 and below.

3.106 Failure to legislate in this area could result in the transfer of these grants into the RSG without the necessary duties being placed upon local authorities. These duties will ensure the continued delivery of the primary school free breakfast initiative and school based-counselling. Without underpinning legislation, there is the risk that local authorities may decide not to continue with these programmes; reduce activity; or, in the case of breakfasts not allow any additional schools to become involved. This would have a negative impact on the ability of children and young people to access and benefit from provision in these areas.

Primary School Breakfast Initiative

3.107 The primary school free breakfast initiative was first introduced in September 2004 and was gradually rolled out across local authorities, with all schools being invited to participate in the scheme by January 2007. The Welsh Government made a commitment to provide for all children of primary school age registered in maintained primary schools in Wales to have a free, healthy breakfast at school each day, giving them best possible start to the day.

3.108 Given that the vast majority of schools that want to participate have already signed up (71% of schools are currently involved) schools signing up each year has gradually decreased since 2007-08. It is anticipated that this decrease will continue and as such the Welsh Government's intention is to transfer the specific grant funding to the RSG. The Welsh Government however still remains committed to the free breakfast initiative; therefore the Bill will propose the following:

- That local authorities be required to provide free breakfasts on each school day at a primary school it maintains if the governing body of the school makes a written request for breakfasts to be provided and 90 days have passed since the local authority received the request. The period of 90 days will give the local authority sufficient time to arrange the provision.
- The local authority's duty to provide breakfasts will not apply (or will cease to apply) if the governing body has asked the local authority to

stop providing breakfasts or the local authority decides that it would be unreasonable to provide, or continue to provide, breakfasts. The local authority would be required to notify the governing body in writing of any refusal to provide breakfasts, or if it is going to stop providing breakfasts.

- Pupils will be entitled to free breakfast if the local authority's duty to provide breakfast applies and a request for breakfast is made to the local authority by, or on behalf of, the pupils.
- Local authorities and governing bodies must have regard to any guidance issued by the Welsh Ministers. Any such guidance would build on the current guidance circular no. 021/2008 document 'Primary School Free Breakfast Initiative' which currently forms part of the terms and conditions for operating the specific grant scheme.
- Local authorities will have flexibility to decide the form of the breakfast content subject to compliance with any regulations made under the Healthy Eating in Schools (Wales) Measure 2009 to regulate food and drink provided to pupils in maintained schools.

Flexible Charging for School Meals.

3.109 In providing milk, meals and other refreshments in schools local authorities are allowed to charge for that provision. However under current legislation where they do charge they must charge the same price for every person for the same quantity of the same item.

3.110 This lack of flexibility for local authorities in their pricing structure prevents them from introducing policies to help families with several children at school or from encouraging the take up of school meals. Informal discussions with local authorities have shown they would welcome the flexibility over school meal pricing.

3.111 Such flexible charging could be used by an authority to provide a reduced price for:

- pupils within larger families where more than one pupil is in receipt of school meals.
- younger pupils to encourage the take up of school meals,
- new pupils at school for a limited period.

3.112 The Welsh Government considers the provision of a healthier school meal for learners important in the context of several initiatives.

- Appetite for Life – the Welsh Government's agenda for improving the food and drink provided in schools;
- Healthy Eating in Schools (Wales) Measure 2009 includes a provision 'Promotion of meals in schools and other educational establishments' which require local authorities/governing bodies to encourage the take-up of school meals;

- Child Poverty Strategy.

3.113 Therefore the Bill makes provision to give local authorities flexibility over the pricing of school meals. In addition the EA 1996 will be amended to prevent local authorities and governing bodies from charging more than the cost of providing milk, meals or other refreshments to pupils. Currently there is no cap on how much a pupil can be charged.

3.114 The Welsh Government can foresee no reason that one group of pupils could or should be charged a higher price for a school meal in order to subsidise a lower charge to another group of pupils. This provision would mean that local authorities and schools must not charge a price that exceeds the cost of providing the meal.

3.115 This change in pricing has no affect on the provision of free school lunches (or free milk) to eligible pupils.

3.116 In the absence of this legislation, local authorities would be required to maintain the current system of pricing for school meals. The static pricing structure as it currently exists would prevent any innovative approach to pricing that a local authority may wish to adopt now or in the future. Should a local authority wish to utilise this pricing flexibility the Welsh Government is confident it will be of significant benefit parents and children.

4. Consultation

White Paper

4.1 The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement the Department for Education and Skills on the 10th October 2011 issued a White Paper on the School Standards and Organisation (Wales) Bill 2012. The White Paper invited comments on each of the proposals for the Bill and was published on the Welsh Government website. The department also produced both children's and young person's versions. These documents are available on the Welsh Government website at: <http://wales.gov.uk/consultations/education/wms/?lang=en&status=closed>

4.2 The period for responses ran for twelve weeks and concluded on January 5th 2012. In total we received 342 responses to the individual proposals from 72 responders. The response to the White Paper was largely positive with the majority of the responders broadly in agreement with the proposals.

4.3 The following is a breakdown of those that responded to the White Paper based upon the questions asked.

- 61% agreed with all or most of the proposals
- 29% agreed with some / disagreed with some of the proposals
- 10% disagreed with most or all of the proposals

4.4 The 72 responders can be categorised as follows:

Local Authorities	10
Representative Bodies	27
Unions	7
Schools and Further Education Institutions	6
Charities	9
Health Sector	2
Individuals	9
Other	2

4.5 The majority of the questions raised by respondents sought clarification to some elements of the proposals or suggested minor changes to the specific details of the proposals. The Welsh Government has considered all of the responses in detail and where it was appropriate these have been incorporated into the Bill.

4.6 There were a number of questions regarding the details of the proposals for schools causing concern, school improvement and school organisation. The legislation for each of these areas will be supported by guidance. The questions raised during the consultation will be considered during the development of the guidance, which will where appropriate be subject to further consultation.

4.7 The Welsh Government has considered the suggestions made for revising the thresholds required for parents to call a meeting. The Welsh Government has concluded that there should be different thresholds applied to primary and secondary schools to make it a realistic option for parents to achieve.

4.8 The detailed Welsh Government response to the White Paper is available to view at:
<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/schoolstandardsbill/?lang=en>

Other consultation

4.9 Prior to the publication of the School Standards and Organisation (Wales) Bill White Paper, separate consultation has also taken place in relation to the school organisation and WESP proposals.

4.10 The principles underlying the provisions on school organisation have been subject to extensive consultation with stakeholders. A detailed consultation document on the potential legislative changes was issued on 28 November 2010. The document set out the current process and the rationale for change and gave a breakdown of most of the specific changes which were proposed. The White Paper asked a series of questions about particular aspects of the proposals in addition to giving the opportunity to comment more generally. A separate questionnaire was produced for the use of children and young people.

4.11 The consultation document was sent to a number of organisations, including the Welsh Local Government Association (WLGA) and all local authorities, diocesan education authorities, the Children's Commissioner, all foundation school governing bodies and a 10% sample of all other schools. The document was also made available on the internet.

4.12 In addition officials held seminars and meetings with representatives of the local authorities, the diocesan education authorities and the Children's Commissioner.

4.13 13 responses were received to the children and young people's questionnaire and 32 responses were received in relation to the main consultation document – around half of which were local authority responses. Other responses were received from the WLGA, Welsh Language Board, teachers unions, Catholic Education Service, Governors Wales, representatives of foundation schools and members of the general public.

4.14 Most responders recognised the need for change and supported most aspects of the proposals, whilst suggesting minor modifications to matters such as timings. However, in relation to the local decision maker issue, local authorities and the WLGA generally favoured local authority executives being allowed to take all of the decisions. There was a considerable divergence of opinion in relation to the proposed accelerated process for very small schools, with some respondents believing that this approach was unfair. Foundation school representatives were opposed to all aspects of the proposals which they perceived as making it easier for

local authorities to alter or close foundation schools.

4.15 In the light of the consultation responses, a number of amendments were made to the detail of the proposals. In addition, the Welsh Government considered afresh the proposals for local decision maker and the accelerated procedures for very small schools. The concerns and contrary views expressed by some respondents notwithstanding, it was concluded that the advantages of the proposals outweighed the disadvantages.

4.16 In relation to the proposals on WESPs: The draft Welsh-medium Education Strategy was subject to a full 12-week formal consultation process in 2009. In general, the introduction of a more systematic planning system under the auspices of the Welsh Government was welcomed.

4.17 In addition to the consultation on the Strategy, a separate consultation was also issued in 2009 on assessing parental demand for Welsh-medium education. The consultation asked respondents to give their views on placing a statutory requirement on each local authority to conduct surveys amongst parents in order to discover the need for Welsh-medium education, and for local authorities to respond positively to the results of the surveys in meeting the needs identified. Respondents were generally in favour of imposing requirements on local authorities to measure demand. However, respondents noted that specific guidelines or conditions should be considered, especially in relation to local circumstances.

4.18 The consultation documents and responses can be found on <http://wales.gov.uk/consultations/education/wms/?lang=en&status=closed>

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (affirmative, negative, no procedure), if any, together with reasons why it is considered appropriate.

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	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. 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	Statutory Procedure 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	Welsh	Order	The relevant date included in	Negative	Amendments to the date are an

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
make an order changing the relevant date for the determination of whether a school's number of roll makes it a small school	Ministers		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	resolution	administrative detail and unlikely to be controversial.
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.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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 for Welsh Ministers to make Regulations in connection with the submission of a Welsh	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	Negative resolution	The detail is technical regarding the submission of a Welsh in education strategic plan for approval to the Welsh Ministers and is unlikely to be

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
in education strategic plan for approval.			evidence based needs.		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 or more local authorities	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 local authorities. 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	Negative resolution	The detail is technical regarding the preparation of joint Welsh in education strategic plan and is unlikely to be controversial.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			or amend the duties set out on the face of the Bill in response to evidence based needs.		
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 receiving primary education.	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.
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	Welsh	Regulation	The grounds for intervening in	Negative	The detail is technical regarding

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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	Ministers		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 school.		the transition to a normally constituted governing body and is unlikely to be controversial..
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	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	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

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
proposals to change a school's category in respect of the government of a school			set out regulations		controversial.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so, the exact nature of this consultation will be decided when the proposals have been formalised.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at Section 7.

6.2 A cost benefit assessment is included at Section 8.

6.3 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

PART 2- REGULATORY IMPACT ASSESSMENT

7. Options

Intervention for Schools causing concern

Option 1: Do Nothing - Not to consolidate, clarify and reform existing provisions

7.1 Estyn has identified that many local authorities are not using their full range of powers to improve schools quickly enough and some schools are left to underperform over a long period of time. Only a few local authorities have issued warning notices in these circumstances. Informal consultation with the Welsh Local Government Association suggests that local authorities perceive their current powers to be unclear and ambiguous. The current criterion for issuing warning notices dissuades local authorities from issuing them sufficiently early. There is currently no power for Welsh Ministers to issue statutory guidance to schools and local authorities to effect better and more consistent practice in relation to intervention in schools causing concern.

7.2 Doing nothing will not change the poor practice that Estyn has identified whereby local authorities are not using their full range of powers to ensure the rapid improvement of underperforming schools.

Option 2: Do Minimum - To consolidate and restate the existing provisions

7.3 Consolidating and restating existing provisions will provide clarity to local authorities and Welsh Ministers on the powers that currently exist and the circumstances in which they can be used.

7.4 However, it will not change the current position where the criteria for issuing warning notices dissuades local authorities from issuing them sufficiently early.

7.5 As now there would be no power for Welsh Ministers to issue statutory guidance on schools causing concern which local authorities will be required to follow and which would affect better and more consistent practice in relation to the support and intervention of schools causing concern.

Option 3: To consolidate, clarify and where necessary reform existing provisions

7.6 Consolidating, clarifying and reforming existing provisions will make it easier for local authorities to navigate the law in relation to schools causing concern. Local authorities will be clear about their powers of intervention and the powers of Welsh Ministers and the circumstances in which they can and should be used.

7.7 Broadening the criteria for issuing warning notices will provide a better basis for local authorities to consider issuing warning notices sufficiently early and before issues of management and governance have a detrimental impact on school standards.

7.8 Welsh Ministers would have the power to issue statutory guidance to schools and local authorities on schools causing concern which local authorities would be required to follow unless there were very good reasons to depart from it. This will encourage better use of local authorities' powers of intervention leading to more consistent, timely and effective practice and more rapid improvement of schools causing concern.

School Improvement

Option 1: Do nothing

7.9 Under this option, no legislative action would be taken. School improvement strategies currently under development including high reliability teaching strategies and professional learning communities will continue to be implemented under the School Effectiveness Framework, on a non-statutory basis. Although future school improvement priorities delivered through the SEF will be better informed by School Standards Units (SSU) stock takes there is a danger that this approach could simply maintain the status quo.

7.10 In summary, taking the 'Do Nothing' option would contradict the commitment made by the Minister for Education and Skills to drive up school improvement and introduce challenge on a national basis. This option could:

- impact upon the delivery of the Minister's "20 Point Action Plan", if the plan is not underpinned by a statutory framework for school improvement;
- contribute to the continuing gap in educational performance (if there is no statutory, standardised approach to school improvement and school self evaluation);
- further isolate leading sector practice (identified as an urgent SSU priority) if schools are not directed to adopt proven school improvement strategies, including professional learning communities;
- dilute the impact of comparable provisions within the Bill to issue statutory guidance in relation to formal intervention in schools, which could be reinforced by statutory school improvement powers.

Option 2: Do Minimum

7.11 This option provides scope for the Welsh Minister to influence school improvement using existing legislation by issuing an order in relation to certain aspects of the curriculum and making regulations in relation to teacher training.

7.12 In relation to the curriculum, the Welsh Minister can currently make an order under section 108 of the 2002 Act in respect of prescribing teaching methods and teaching materials. Local authorities (LAs) also have duties in relation to planning the local curriculum. Using existing powers, the Welsh Minister could make an order under section 108 to achieve a policy objective i.e. in terms of literacy, the Welsh Minister could specify texts to be used as a teaching tool in schools.

7.13 A section 108 order would place a duty on schools to use certain materials as opposed to merely recommending their use via guidance. However, this option is

limited as the Welsh Minister would not have the power to set out programmes of study, attainment targets or assessment arrangements for the local curriculum. This would limit Welsh Ministers' capacity to intervene at a local level.

7.14 In relation to training about teaching standards, Welsh Ministers could make regulations under section 21 of the Education Act 2002 which define the roles and responsibilities of local authorities, governing bodies and head teachers in relation to the conduct of the school. This could encompass provisions about training about teaching standards. Such regulations may confer functions on the local authority, governing body and the head teacher. Specifically this section places a duty on the governing body to conduct the school with a view to promoting high standards of educational achievement. Section 21 would, for example, allow the Welsh Minister to make regulations allocating roles and responsibilities in relation to identifying training needs of teachers and who should provide/secure that. However, it would not allow the Welsh Ministers to require school teachers to undergo specific types of training.

7.15 Section 95 of the Education Act 2005 also provides a power for the governing body of a maintained school to provide training for the school workforce, including scope to provide training as part of a course provided by another training provider. There is therefore an overlap between the respective powers given to governing bodies by section 95 of the 2005 Act and section 21 of the 2002 Act which could lead to inconsistencies in terms of training provision relating to statutory requirements.

Option 3: Power to Issue Statutory Guidance

7.16 Make provision to give power to the Welsh Ministers to issue statutory school improvement guidance to local authorities, school governing bodies and head teachers of maintained schools as to how they exercise their education functions to improve standards of education. This option would promote the development of a new statutory school improvement framework to underpin the priority policy areas outlined within Section 3, including reliable teaching strategies and professional learning communities. The powers will also compliment the work of the School Standards Unit in reviewing national performance, identifying school improvement priorities and introducing challenge on a national basis.

7.17 International benchmarking evidence suggests that education systems with poor and fair performance can achieve improvement through a centre that increases and scripts instructional practice for schools and teachers.

7.18 In relation to curriculum, statutory guidance could be an alternative to a section 108 order under the Education Act 2002 or in addition to such an order. Issuing statutory force to the guidance will ensure that all LA's and schools have regard to it and will reduce variation in the current approach to school improvement. Guidance will ensure a standardised approach in specifying how LA's and schools execute school improvement functions. In addition, a power to enable the Welsh Ministers to direct a body to comply with the guidance if the Minister does not agree with their published reasons will reduce instances of non-compliance.

7.19 In relation to teacher training, it is possible to seek a power for Welsh Ministers to issue statutory guidance as to how the power in section 21 of the Education Act 2002 and section 95 of the Education Act 2005 is to be discharged by governing bodies. Specifically, that guidance could relate to the arrangements to be made by governing bodies of maintained schools, local authorities and head teachers for the training of teachers to allow them to form professional learning communities.

School Organisation

Option 1: Do nothing

7.20 Under the current procedures for deciding school organisation proposals, any proposal which receives objections is referred to the Welsh Ministers for determination. As a result, around 50% of all proposals published require approval by the Welsh Ministers. This does not accord with local authorities' legal responsibility for ensuring the sufficiency of school places provision and efficiency of that provision. Furthermore, the disproportionate role played by the Welsh Ministers is at odds with the fact that expertise in the planning of school places and the detailed knowledge of local needs and circumstances rests at the local and not the national level.

7.21 The involvement of the Welsh Ministers in every proposal which receives an objection adds an unnecessary level of bureaucracy and can sometimes result in significant delay. The most complex cases can take many months to determine because the Welsh Ministers often lack any prior knowledge of the individual proposals and the issues they raise. In addition, "bottle necks" can occur when many local authorities publish proposals at the same time which necessitate referral to the Welsh Ministers. The Welsh Ministers cannot control the flow of statutory proposals and the volume of caseload has led to substantial delays in some cases. This potentially delays the efforts of local authorities seeking to make changes which will lead to a better use of the resources available for education. Indeed the uncertainty that these delays create could in some circumstances inhibit local authorities from bringing forward proposals in the first place.

7.22 At present a single objection to a school organisation proposal can trigger a determination by the Welsh Ministers. This is true even if the objector has no direct interest in the school or schools involved, and where those who are directly affected (pupils, parents, staff etc) are in support of the proposal. In such circumstances it seems nonsensical that proposals should be subject to prolonged independent scrutiny, with the uncertainty that this necessarily entails for all involved.

7.23 The closure of primary schools which have few or no pupils requires the application of the same legislative process as, for example, would be the case with a complex reorganisation of several secondary schools. It is considered that this process is unjustifiably protracted in the case of schools which are no longer educationally or financially viable. In the case of schools with no pupils, the requirement to follow the same legal process as for schools which have pupils on roll, risks bringing the whole system in to disrepute.

7.24 Many proposers engage well with stakeholders and explain their intentions clearly when they consult on school organisation proposals, but the current statutory guidance lacks sufficient detail to ensure that there is consistency in the approach taken to consultation and proposers need only have regard to the guidance. Furthermore, both proposers and interested parties are sometimes unclear about what constitutes good practice and what local people can reasonably expect from consultation. As a consequence, consultation can vary considerably in terms of quality and extent, and trust in the process is often diminished.

7.25 Currently legislation on school organisation is contained in various Acts of Parliament and statutory instruments. These multiple legislative references cause confusion for those responsible for planning school places and determining proposals.

Option 2: Do minimum

7.26 In summary, this option would mean:

- Introducing new guidance for proposers which sets out best practice and provides greater detail on how they should fulfil their duty to consult on school organisation proposals;
- Amending regulations so as to reduce the number of alterations to schools which require statutory proposals. However, the Welsh Ministers would still determine all disputed proposals

7.27 In detail, taking the 'do minimum' option would partially but not completely address the following drawbacks to the current system:

- Introducing new guidance for proposers setting out best practice and greater detail in relation to consultation on school organisation could have the effect of improving standards and consistency in this area. It would also provide a clearer basis for consideration of decisions about the adequacy or otherwise of consultation. However, because the legislation is framed in such a way that proposers would need only to have regard to such guidance, and could not be compelled to act in accordance with it, its effect may be patchy and short lived. As a consequence, the consultation process is unlikely to acquire a high level of trust and acceptance.
- Amending the regulations so that fewer alterations to schools required the publication of statutory proposals would inevitably speed up the process of making those alterations and would reduce the number of proposals determined by the Welsh Ministers. However, it would not necessarily diminish the proportion of disputed statutory proposals being referred to the Welsh Ministers, and would result in the additional drawback that significant changes to schools being made without any input from local stakeholders and those directly affected. Previous consultation with stakeholders about the current prescribed alterations has not identified any alterations where statutory processes are deemed unnecessary.

7.28 The 'do minimum' option would not:

- result in more school organisation proposals being taken at the local level;
- make the process any more streamlined or any less time consuming;
- introduce accelerated procedures for closure of schools with few or no pupils;
- consolidate in one place all school organisation legislation.

Option 3: Establish an Independent Adjudicator

7.29 In summary taking this option would:

- See the setting up of an independent adjudicator, similar to that which exists in England, who would determine disputed school organisation proposals instead of the Welsh Ministers. The Welsh Ministers would thus be removed from the process.

7.30 The 'independent adjudicator' option would not:

- result in more school organisation proposals being taken at the local level;
- make the process any more streamlined or any less time consuming;
- introduce accelerated procedures for closure of schools with few or no pupils;
- develop greater consistency in the way in which consultation is undertaken, nor ensure that best practice is adopted, thus improving trust and confidence in the system; or,
- consolidate in one place all school organisation legislation.

Option 4: Remove requirement for an independent decision maker

7.31 In summary, taking this option would mean:

- allowing proposers to determine all proposals themselves and eliminating any requirement for scrutiny of disputed proposals by an independent body.

7.32 This option would achieve the following objectives:

- all proposals would be determined at the local level; and,
- the process would be streamlined significantly, it would be easily understood, it could be undertaken very quickly and costs would be minimised.

7.33 However, this option would also have significant drawbacks:

- the lack of any form of independent scrutiny of the decisions taken by proposers would potentially undermine confidence in the system amongst those affected by school reorganisation;

- the lack of scrutiny would provide no incentive to local authorities to ensure that due process is followed; and
- local people might feel less not more engaged in the process.

7.34 Potentially, this option could be modified so that whilst most proposals were determined by the proposers, those which were exceptional in some way (e.g. involved the closure of schools with high pupil occupancy rates, or which involved the transfer of pupils over long distances) might trigger referral to an independent decision maker. Alternatively, the Welsh Ministers could retain a power of call-in to use instances where they believe that the proposers may not have followed due process. The current process of school organisation determination in Scotland contains both these provisions. However, the exercise of a power of call-in would necessarily require a high level of prior consideration of the case which would itself be very time consuming and might prove impracticable. Furthermore, the referral of proposals made in exceptional circumstances would not address instances where local people have raised valid and significant objections to proposals made in unexceptional circumstances and would therefore do little to ensure confidence in the system.

Option 5: Reform the legislative process

7.35 This option would include substantially reforming the legislative process for determining school organisation proposals so that most proposals are determined at the local level, either by the proposer (where proposals receive few objections from those directly affected) or, where there is significant local opposition, by an independent Local Determination Panel (LDP). The Welsh Ministers would continue to determine proposals where these are solely about the addition or removal of sixth from education, or where proposals receive objections from a local authority or, in the case of proposals which affect schools with a religious character, diocesan authorities.

7.36 In summary, taking this option would result in:

- fewer proposals requiring determination by an independent third party as a result of objections;
- where proposals do require independent determination, a process which is potentially swifter and for the most part conducted at the local level, thereby reducing the uncertainty for those directly affected;
- a curtailed process for the closure of schools with fewer than 10 pupils or no pupils;
- the introduction of a mandatory code on school organisation which ensures that best practice on consultation and other matters is consistently applied across Wales; and,
- the bringing together in one place of all legislation relating to school organisation in Wales.

7.37 Of the proposals determined by the Welsh Ministers over the last five years, it is anticipated that only around 6% would have been determined by the Welsh Ministers had the reformed system of reorganisation been in place. Of the rest, approximately 55% would have been determined by the proposed Local

Determination Panel and 39% would have been determined by the proposers themselves. Given that currently around half of all proposals published require the Welsh Ministers approval, this represents a very significant transference of responsibility back to the local level.

Welsh in Education Strategic Plans

Option 1: Do nothing

7.38 The process for the introduction of the WESPs on a non-statutory basis has already commenced. Local authorities will have submitted their first WESPs on a non-statutory basis to the Welsh Government by 15 December 2011 for implementation from 1 April 2012. Local authorities will also have submitted their applications for the Welsh in Education Grant (WEG) by 20 January 2012. The WEG and the WESPs are both being aimed at achieving the outcomes and targets of the Welsh-medium Education Strategy. The WEG will be provided to local authorities in 2012-13 regardless of the preferred option.

7.39 Advantages

- A non-statutory system is already in place, which includes guidelines for preparing WESPs and approval and monitoring mechanisms.
- Local authorities would have the flexibility to follow the non-statutory guidelines as they deem appropriate.
- There would be no additional costs for the Welsh Government. Staff are already in place to administer, approve and monitor the non-statutory WESPs and there would be no financial implications to provide funding for the local authorities to implement their WESPs.
- The WEG would be provided to local authorities to assist with the implementation of the non-statutory WESP. However, allocation of the WEG would not be made conditional on approval of the WESP. In addition, there would not be continuing pressure on the Welsh Government to provide the WEG to enforce the preparation of WESPs.

7.40 Disadvantages

- A statutory planning system for Welsh-medium education (Welsh Education Schemes under the Welsh Language Act 1993) would be replaced by a non-statutory system.
- The request to local authorities to complete a WESP for analysis and monitoring by the Welsh Government would not be enforceable.
- If not enforceable, local authorities may view the WESPs as a paper exercise with little effect on the education system in providing Welsh-medium opportunities.
- Local authorities would not be held accountable to Welsh Ministers for the planning of Welsh-medium and Welsh-language education in the statutory phase of education.

7.41 Risks

- Refusal by a local authority to comply might result in local authorities not providing effective planning for Welsh-medium provision and as a consequence, failing to ensure suitable and sufficient Welsh-medium opportunities.
- There might be failure to develop the Welsh-language skills of learners to their full potential which might lead to failure to increase the number of learners with high-level skills in Welsh.

Option 2: Do minimum

7.42 Linking enforcement of non-statutory WESPs on local authorities with grant funding

7.43 In this option, local authorities would have additional incentives to develop appropriate WESPs, even though remaining non-statutory, through linkages to grant funding. Successful application for the full amount of the Welsh in Education Grant (WEG) would be made conditional on approval of the WESP for each local authority.

7.44 Advantages

- A non-statutory system is already in place, which includes guidelines for preparing WESPs and approval and monitoring mechanisms.
- Linking to grant funding would provide an incentive to develop appropriate WESPs.
- There would be no additional costs for local authorities, above the current commitments to 30% match-funding to the WEG (2012-13), as they are already preparing and submitting WESPs to the Welsh Government for approval and monitoring.

7.45 Disadvantages

- There would be continuing pressure on the Welsh Government to provide the WEG funding to enforce the preparation of WESPs.
- The WEG would be directly linked to specific elements of the WESP. This could lead to a lack of clarity about what might constitute a sufficient failure to fulfil requirements that might merit clawback or reduced future grant.
- If the WEG was to be cut, the Welsh Ministers might have reduced influence over local authorities' incentives to prepare or implement a WESP.
- There would be additional costs for the Welsh Government associated with linking the analysis and monitoring of the WESPs to the WEG.

7.46 Risks

- If local authorities were non-compliant and sanctions were to be applied, this could take the form of clawback or reduced future allocation of grant. In that case, there is a risk that the influence of the WESPs over ensuring improved Welsh-medium planning and reshaping the training and support framework for Welsh-medium and Welsh-language provision might be

reduced in those very local authorities where there may be a greater need for improvement. Clawback or withholding elements of grant might therefore be counter-productive.

- There might be failure to develop sufficient opportunities for learners to access Welsh-medium education.
- There might be failure to develop the Welsh-language skills of learners to their full potential which might lead to failure to increase the number of learners with high-level skills in Welsh.

Option 3: Introduce Primary legislation

7.47 Impose a statutory requirement on local authorities to prepare a WESP, to be approved and monitored by the Welsh Ministers, and to take reasonable steps to implement their WESPs.

7.48 This option would meet the policy objectives outlined in Section 3. The WEG would be provided to local authorities to assist with implementation. However, the allocation of the WEG would not be conditional on approval of the WESP.

7.49 Advantages

- Legislation would impose new duties in relation to the preparation, implementation and publication of a plan to improve Welsh-medium education (the WESPs). It is not considered that existing powers are adequate as more detailed requirements are needed than existing legislation would allow for.
- Statutory WESPs would provide continuity from the Welsh Education Schemes of the Welsh Language Board, with which local authorities have been complying for many years. There would be little, if any, additional administrative burden to the local authorities.
- Making the production and submission of WESPs to the Welsh Ministers for approval a statutory requirement on all local authorities would enable close monitoring of local authorities' planning for all Welsh-medium pre-statutory and statutory provision and progress against targets of the Welsh-medium Education Strategy. This would also lead to concentration by local authorities on improvement in standards in literacy in Welsh and Welsh Second Language and to greater collaborative planning of Continuous Professional Development.
- The establishment of an improved local authority planning system for Welsh-medium education would result in greater coherence and consistency in the provision of Welsh-medium school places to fulfil projected need or demand in each locality and across regions.
- Legislation would provide for the introduction of WESPs as one of the main mechanisms for taking forward the national strategic direction for Welsh-medium education and would provide accountability to Welsh Ministers.
- Local authorities would be expected through their WESPs to plan for more opportunities for learners to access Welsh-medium education where appropriate.

- Welsh Government could ensure that local authorities are implementing policies which provide greater opportunities for learners to achieve their potential in the Welsh language, and so achieve a greater number of learners with higher-level skills in Welsh.
- If the WEG was to be cut, the Welsh Ministers would still be able to hold local authorities accountable for the preparation of a WESP.

7.50 **Disadvantages**

- There would be some financial implications for local authorities and the Welsh Government in implementing WESPs. These are considered in Section 8.

7.51 **Risks**

- Refusal by a local authority to comply with legislation might result in local authorities not providing effective planning for Welsh-medium provision and as a consequence, failing to ensure suitable Welsh-medium opportunities.

Annual Parents Meeting

Option 1: Do Nothing

7.52 Current law in Section 33 of the Education Act 2002 requires governing bodies to hold an annual parents' meeting every year unless one of the exemptions in the Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005 applies. In practice this means that governing bodies are required to hold a meeting with parents every other school year, and in the intervening year governing bodies canvass the views of parents as to whether they would like a meeting. This option would maintain the current approach.

Option 2: Do Minimum - Remove the requirement to hold an annual parents meeting

7.53 Under current law Welsh Ministers have a power in Section 103(3) of the Education Act 2005 to make an order repealing the requirement for a governors' annual meeting with parents, and to repeal existing regulations. If such an order was made governing bodies would no longer have to make arrangements to meet parents every other year and to canvass their views in the intervening years.

7.54 Given what we understand to be the apparent apathy and reluctance of parents to meet the governors under current arrangements, this option could mean that in some schools the governors would never have to take steps to engage parents in the wider life and community of the school, or to seek their views on the future development and direction of the school.

7.55 Should parents want to discuss an issue with the governing body this option does not give them the right to request a meeting, and even if they did ask to meet the governors, there are no requirements on the governors to do so.

Option 3: Introduce legislation - Give parents the right to call a limited number of meetings with the governing body

7.56 Under the proposed option governing bodies would only be required to arrange a meeting if a quorum of parents asked for one.

7.57 Following consultation on the proposals to give a quorum of parents the right to request a meeting with the governing body, it has been decided that parents should be able to request up to three meetings per school year. The proposed quorum of parents required to request a meeting would be:

- the parents of 10% of registered pupils in a secondary school or the parents of 30 registered pupils, whichever is the lowest; or
- the parents of 10% of registered pupils in a primary school or the parents of 10 registered pupils, whichever is the lowest.

7.58 The right to call for only one meeting per year would limit parents' ability to engage with the governing body and there may be unfinished business from the one meeting which parents would like to follow up on, but this arrangement does not give parents the right to any further meetings. They would need to rely on the goodwill of the governing body to meet them again.

7.59 Increasing the number of potential meetings would provide parents with a real opportunity to engage the governing body during a school year on a particular issue of concern and to be able to have a follow up/progress meeting(s) if they wished. Parents would also have the opportunity to discuss different issues at subsequent meetings. This option also allows parents to have some control over when these meetings should take place and to set the agenda.

7.60 For parents, the advantage of this option is that they will be able to decide (subject to sufficient interest from other parents) when they meet the governing body and will have some control over the topics to be discussed at the meeting.

School-based counselling

Option 1: Do nothing

7.61 This option would involve continuing with the current arrangement of delivering the school-based counselling strategy through a specific grant to local authorities.

Option 2: Do Minimum

7.62 Transfer funding to the RSG but without the underpinning of legislation Under this option, once the funding is transferred to the RSG it would be for local authorities to determine how best to utilise that funding and whether to maintain school-based counselling services. Guidance on operating school-based counselling would be developed to support local authorities choosing to continue making school-based counselling available. The biggest risk with this option is that without underpinning legislation local authorities may decide not to continue with the provision or

significantly reduce provision. Any removal or reduction in provision could have a negative impact on pupils health and wellbeing.

Option 3: Introduce legislation

7.63 Transferring the funding to RSG, underpinned by legislation, will firmly embed the Welsh Government's policy of school based counselling in Wales. It will also have the benefit of reducing the bureaucracy involved in running the grant scheme both within the Welsh Government and local authorities, in line with the Front Line Resources Review. The Welsh Government would continue to monitor and evaluate anonymised output and outcome data provided by local authorities.

Free Breakfast Initiative

Option 1: Do nothing

7.64 There is the option of continuing with the current arrangements, i.e. deliver the programme of free breakfasts through a specific grant to local authorities (this arrangement has been in place since September 2004). Payments are made termly in arrears.

7.65 Local authorities currently claim for individual funding elements:

- Set allowance per day per child for food;
- Set allowance per day for staff to supervise and prepare the food – based on a standardised hourly rate and staff to pupil ratios;
- Initial set up allowance to purchase equipment and allowance for replacement items after 3years involvement in the initiative;
- Cost of providing specified training e.g. Basic Food Hygiene and initial CRB check for new employees;
- Termly allowance per school to support the operation of the scheme – this funding can be used flexibly to support the operation of the initiative - for example to cover higher food or salary costs than the standardised amounts.

7.66 Each local authority also receives an administration fee for managing the initiative – this fee is based on the number of schools participating in the initiative each term.

7.67 Local authorities are required as part of the terms and conditions of the grant scheme to undertake termly spot checks on a minimum of 5% of schools participating in the initiative. The spot check reports are submitted to the Welsh Government.

7.68 As a condition of grant, should the total amount of funding for the year exceed £100,000, (this is the case for 21 of the 22) authorities are required to review the scheme under their internal audit arrangements.

7.69 Under this option additional schools could decide to provide free breakfasts at any point in time. The number of additional schools coming on board each terms is fairly low and the administration can be absorbed within the current arrangements of

the Welsh Government. Local authorities receive funding for administering the scheme based on the number of schools participating.

Option 2: Transfer funding to RSG without legislation

7.70 Once the funding is transferred to the RSG it would be for local authorities to determine how best to utilise that funding and whether to maintain this initiative. The current guidance on operating the free breakfast initiative would be developed to support local authorities choosing to continue making breakfast provision available. The biggest risk with this option is that without underpinning legislation local authorities may decide not to continue with the provision; reduce the programme; or, not allow any additional schools to become involved. The School Census 2011 indicated that 1,052 schools reported free breakfast data and that the number of children who took at least one breakfast during the week prior to census was 66,954. The breakfast sessions also provide opportunities for:

- local employment;
- local procurement;
- working parents with the option of dropping their children at school on the way to work knowing that they are safe and receiving a healthy breakfast.

7.71 Any removal or reduction in provision would have a negative impact on these areas.

7.72 It is anticipated that a damping mechanism would be required to make the transition from demand led funding to a standard formula based transfer to RSG. This will result in winners and losers for this particular programme as the level of demand varies across local authorities in Wales. This may be the case with other transfers into RSG and as a consequence overall could balance out.

Option 3: Introduce legislation and transfer funding to RSG

7.73 Transferring the funding to RSG, underpinned by legislation, would firmly embed the Welsh Government's policy of free breakfasts in primary schools in Wales. It would also have the benefit of reducing the bureaucracy involved in running the grant schemes, both in the Welsh Government and local authorities, in line with the Front Line Resources Review.

7.74 There is the possibility that in certain circumstances the local authority could decline a school's request to participate in the scheme. However, in these circumstances the local authority would need to demonstrate that it would be unreasonable to make this provision available for reasons which might include for example, no or low demand, the cost of provision being disproportionately high for numbers involved, or inability to recruit staff.

7.75 The same issues regarding the level of funding transferred to RSG for Option 2 would apply to this option.

Flexible Charging for Schools

7.76 The policy intent is to allow schools and local authorities greater flexibility over the pricing of school meals, within a capped limit. Appropriately designed flexible charging arrangements could help low income families and to increase the take-up of school meals.

7.77 The circumstances in which this flexibility could be used might include: (a) to discount the cost of meals for a limited period for the new intake in infant, junior and primary schools (b) to discount the cost of meals for families where there is more than one child wanting school meals (c) families on low incomes who receive the maximum working tax credit.

7.78 The use of flexible charging would be entirely optional and will involve a local decision to subsidise school meals during the offer period. There will only be an impact in those local authorities which choose to implement the flexibility. The degree of impact would depend on how they implemented it.

7.79 This change in policy will fit in with wider policy developments:

- Appetite for Life - the Welsh Government's agenda for improving the food and drink provided in schools;
- Healthy Eating in Schools (Wales) Measure 2009 which includes a provision for the 'Promotion of meals in schools and other educational establishments' requiring local authorities/governing bodies to encourage the take-up of school meals. The Minister for Education and Skills has agreed to commence the various provisions within this Measure and the drafting of regulations setting out the requirements for food and drink provided on school premises. This legislation will commence in September 2012 for primary schools and September 2013 in secondary schools.
- Child Poverty Strategy - The proposed legislation could potentially impact on child poverty and health inequalities as it would allow schools and local authorities greater flexibility over meal pricing, which could be used to help vulnerable families and increase the take-up of health school meals.

7.80 The introduction of flexible charging is has the potential to have a positive impact on school pupils by reducing and removing barriers and inequalities that may currently exist.

7.81 The change could, in particular, benefit children in their first year at a new school in the case that local authorities decide to provide meals free of charge for a limited period to encourage children to try school meals. Although the flexible charging period may in such circumstances be temporary, it is hoped that once families and their children habitually take a healthy school lunch, a healthy eating habit will remain with them for life.

7.82 There is also a range of evidence³ that a healthy school lunch can have a positive impact on pupils' behaviour, alertness, concentration and their performance

³ *School Food Trust: School lunch and behaviour in secondary schools* (published July 2009)
Healthy school meals and educational outcomes, Belot and James (2009)
School lunch and behaviour in primary schools, School Food Trust

at school directly and indirectly. Reflecting on such evidence, local authorities and schools have been working towards providing school lunches, which meets the new nutritional standards proposed in Appetite for Life and encouraging pupils to take a school lunch.

7.83 It is thought that providing these benefits through implementing appropriate flexible charging structures to pupils from low income families could, in some circumstances, be disproportionately beneficial as school lunch may be their only nutritionally balanced meal of the day. Access to free school meals (FSMs) is means-tested and open to all eligible families who apply for them. Although FSMs are not always taken up by those eligible, many families on low incomes struggle to pay for school meals, particularly if they have more than one child.

7.84 In England, over recent years, it is understood that the Secretary of State has allowed a number of local authorities to pilot a wide variety of school meal deals using the Power to Innovate provisions in the Education Act 2002. In all cases, lunch take-up has risen, benefiting the pupils who have taken advantage of the deals but also helping local authorities and schools to make their lunch services more viable and sustainable in the longer term.

7.85 The Education Act 2011 has since amended the charging requirement in England to allow local authorities and schools in England to use special pricing offers with a view to encouraging more pupils to try a healthy school lunch.

Option 1: Do nothing

7.86 Doing nothing would maintain the current system of pricing where local authorities are allowed to provide milk, meals and other refreshments to certain categories of children and, where they do so, they are allowed to charge for that provision. Therefore, where they do charge, they would have to continue to charge every person the same price for the same quantity of the same item.

7.87 Such pricing arrangements would continue to prevent local authorities and schools from helping families with several children by charging a lower price for the second and subsequent children, or from charging younger children less than older children. There is also nothing to prevent school meal providers from charging pupils more than the cost of producing the food on offer.

Option 2: Utilise the Power to Innovate

7.88 This option would make use of an existing Power to Innovate. Chapter 1 of Part 1 of the Education Act 2002 ("the 2002 Act") gives the Welsh Ministers the power to respond to an application by a local authority by issuing an order suspending or modifying legislation for a period of up to 3 years. The power is intended to enable innovative pilot projects to take place and may by order be extended in time for a further 3 year period.

Effects of diet on behaviour and cognition in children, in the British Journal of Nutrition, Bellisle 2004

7.89 Before the Power to Innovate can be exercised, the provisions contained in Sections 1 to 5 of the 2002 Act will need to be brought into force by the Welsh Ministers by Order made under Section 216 of the 2002 Act.

7.90 If the relevant sections are brought into force, local authorities or governing bodies of schools with a delegated budget could make an application to the Welsh Ministers to pilot the operation of flexible charging for school meals.

Option 3: Amend existing legislation

7.91 Under this option, legislation would be amended to enable local authorities and schools in Wales to vary the price charged for milk, meals and other refreshments provided in schools.

7.92 It would though be a matter for local authorities and the governing bodies of schools with a delegated budget to decide, taking account of any funding implications, whether they wish to vary prices.

8. Costs & benefits

8.1 This chapter contains the cost benefit analysis of the options detailed at Section 7.

Intervention in schools causing concern

Option 1: Do nothing

8.2 The current position whereby local authorities do not use their existing powers effectively and proactively would continue. This means that when a school begins to struggle, demonstrating a decline in educational standards and/or financial management, the local authority's statutory role in school improvement is not always exercised at an appropriate point. Many of the schools that have declined to the extent of being assessed by Estyn as requiring special measures have demonstrated performance issues that could have been identified and addressed at an earlier stage.

8.3 The costs of intervening in schools causing concern vary considerably, depending on the nature of the interventions required. To give an indication of the typical range of current costs for Interventions in schools causing concern examples are detailed below.

- Local authorities already have the power to issue a warning notice. The cost of issuing a written warning notice is approximated to be in the region of £1000.
- A weak school/governing body can be required to collaborate with another school/governing body. This is likely to have negligible costs (estimate no more than £500).
- Local authorities routinely provide school improvement support and monitoring of performance. Examples of possible actions and costs are given below:
 - mentoring and oversight from local authority school improvement officers or an experienced head teacher from another school, for example 10 days at approximately £200 per day for a total cost of £2,000 (based on an indicative salary of £40,000 pa)
 - extra additional support of, for example, 40 additional days of intervention support at approximately £300 per day for a total cost of £12,000 (based on an indicative salary of £60,000 pa);
 - sometimes an external intervention may indicate that one or more members of the school staff may need to be placed under competence procedures, or in extreme circumstances, replaced. This would not introduce additional costs, unless there are severance costs or costs of recruiting additional staff. The salary for a newly qualified school teacher starts at £21,588, the higher point on the head teacher pay scale is £105,097.
- Where an authority applies its powers to replace a board of governors with an interim executive board, it has the power to offer members of that board such remuneration as it considers appropriate. No such board has yet been through a full cycle of its school improvement work but as a

rough guide an interim executive board of 5 members earning £300 per day, meeting 6 times a year for two years would cost £90,000.

- In extreme circumstances, where Welsh Ministers use their powers to direct a local authority to close a school. This would involve severance or redeployment costs of the schools' staff which may cost several million pounds which the local authority will be expected to meet.

8.4 Local authorities already have powers to intervene in schools causing concern. The Welsh Government does not collect data on the number of warning notices currently issued by local authorities and the circumstances in which they were issued. Similarly we do not have data where local authorities appoint additional governors or suspend the right to a delegated budget. Only one local authority in Wales to date has replaced the governing body of a school with an interim executive board. There will be existing administrative costs to local authorities in issuing warning notices (approximately £1000) and to local authorities in providing/commissioning support and to schools in taking action in response. The level of support provided by a local authority will depend on the level and nature of support required by the failing school on a case by case basis. Support could range from arranging for an experienced head teacher to provide advice to a failing school on how best to re-assess its priorities for the next school year, to more serious interventions involving funding extra days of a school improvement officer. Local authorities routinely provide monitoring and school improvement services to all schools. Failure to intervene at an early stage for example by issuing a warning notice is likely to lead to problems becoming entrenched leading to more costlier interventions later on or ultimately school failure leading to closure.

8.5 More significant than the financial costs of intervening in schools causing concern are the qualitative benefits on education standards: a school demonstrating strong leadership and driving forward a school improvement plan can demonstrate rapid results (eg in increased proportions of pupils receiving five or more GCSEs on leaving)

Option 2: Do Minimum - To consolidate and restate existing provisions

8.6 There would be administrative costs to the Welsh Government in consolidating and restating existing provisions and updating non-statutory guidance to reflect these changes, but these would be minimal (one off costs of £2,000 in 2012/13 based on the issue of similar guidance).

8.7 There would be benefits to local authorities in consolidating and restating existing provision as it would make the law easier for them to navigate and provide clarity on their powers and the circumstances in which they can be used. However the criteria for issuing warning notices will continue to deter local authorities from issuing them sufficiently early, allowing schools to deteriorate for too long leading to the need for some of the costlier interventions set out in 8.3 above.

Option 3: Consolidate and where necessary reform existing provisions

8.8 These provisions do not impose additional burdens on local authorities. Local authorities have existing powers to intervene in schools causing concern. The intention is to encourage earlier and more effective use of those powers. It is reasonable to expect that where a school is identified as a cause for concern and is unable or unwilling to engage constructively with the local authority to secure improvement that there will be a need for the local authority to intervene at some stage. As such whilst we might anticipate an increase in the issue of early warning notices, we would expect a decrease in the requirement for more intensive and costlier interventions later on if problems are allowed to reach crisis point.

8.9 We anticipate that broadening the criteria for issuing warning notices may lead to local authorities issuing warning notices earlier to secure more rapid school improvement. As stated in Option 1 above the administrative cost to local authorities in issuing a warning notice are approximately £1000. There would possibly be a cost to the local authorities in providing/commissioning support and to schools in responding to the weakness in line with the examples provided in Option 1. The costs involved will depend on the failure involved and the particular action required in response. As such it is difficult to quantify, being largely based on local authority officer time. As a broad estimate it may take one week of two officer's time to go to all meetings, evidence gathering and application of warning notices with a gross rough cost estimate of £500 a day (based on one week of two indicative salaries of £50,000), but as this would probably be regarded as high priority work it would be a fair assumption to make that the need to produce a warning notice would supersede other activities and would cost less. Local authorities routinely provide monitoring and school improvement services to all schools. However, earlier intervention is likely to be less costly and should lead to cost savings in the longer term as schools will not be left to underperform for long periods of time and until problems reach crisis point leading to more costly interventions in the longer term. As such, active application of local authority powers in line with statutory schools causing concern guidance may lead to reduced intervention costs

8.10 There will be benefits to children and young people in not attending underperforming schools for long periods of time and the detrimental impact this has on their educational outcomes. There are significant economic benefits associated with improving educational attainment of children and young people in Wales. These costs are difficult to quantify.

8.11 As stated in option 2 there would be some administrative costs to the Welsh Government in issuing statutory guidance on schools causing concern but these costs are expected to be minimal (one off costs in the region of £2k in 2012/13) based on the issue of previous guidance.

Preferred Option

8.12 After full consideration of the options we decided not to opt for options 1 and 2. These options would not change the current position as identified by Estyn where schools are allowed to underperform for long periods of time because local authorities fail to use their full range of intervention powers.

8.13 This will continue to have a detrimental effect on the educational outcomes of children and young people attending those schools and a wider cost to society.

8.14 We have decided to opt for Option 3 as the only option that will secure the overall aim of ensuring that local authorities are aware of their powers of intervention in schools causing concern and those of Welsh Ministers and that they use those powers effectively and proactively to bring about the rapid improvement of underperforming schools.

School Improvement

8.15 The statutory school improvement guidance would specify ways that teachers, schools or others could undertake their existing roles more effectively.

Option 1: Do Nothing

Costs

8.16 Although there would be no additional legislative costs directly associated with this option, without statutory school improvement guidance it is likely that school standards will remain lower than they ought to be. Whilst some schools will identify and implement educational processes, such as schemes of work, that are best practice, many will continue not to do so, as shown by evidence from school inspections and Estyn studies. In the long term it is possible that there could be some financial costs associated with a need for other intervention measures to address performance issues such as an external evaluation or involvement of external experts to improve educational performance. In total these are estimated to be around £350,000 comprising of £50,000 to conduct an external evaluation and £300,000 to implement the evaluation action plan. This additional cost burden, to be met by the Welsh Government could potentially arise over the next 5 years, if performance standards continue to decline.

Benefits

8.17 No additional benefits are anticipated by maintaining the current arrangements. However, this option would retain the current flexible approach to school improvement, without the confines of prescriptive, statutory guidance. Local authorities can continue to apply an ad hoc approach to performance improvement, identifying schools with good practice and promoting effective ways of sharing this with underperforming schools.

Risks

8.18 Existing evidence has clearly demonstrated that this approach is failing to drive up performance standards. If there are no powers for the Welsh Ministers to direct less successful schools to adopt effective practice, current performance gaps are likely to persist.

Option 2: Do minimum

Costs

8.19 The overall financial costs for this option are estimated to be £430,000 of which only £7,500, in relation to on-going stakeholder meetings, will be recurrent. The costs are composed of transitional costs substantially covering awareness raising with schools and local authorities (estimated cost of around £313,000), collating best practice (estimated to be just under £110,000), with the remaining costs associated with consultation and publishing. The profile of the costs will occur over several financial years to coincide with academic years commencing in 2012/13.

8.20 The total costs of £430,000, identified above, in relation to this option would impact upon Welsh Government, local government and schools. These development costs would need to be met by the Welsh Government through the School Effectiveness Grant.

8.21 However, these costs could increase if the additional intervention costs of £350,000 comprising of £50,000 to conduct an external evaluation and £300,000 for a 2 year secondee appointment to implement the evaluation action plan, noted in the option 1 also apply.

Benefits

8.22 In comparison to option 1, this approach would enable local authorities to retain a degree of freedom and flexibility in adopting innovative approaches to school improvement in relation to the local curriculum. This option would also provide scope for the Welsh Minister to direct the school improvement agenda using existing legislation, promoting new policy changes through a curriculum order or making regulations to influence teacher training.

Risks

8.23 This option would significantly limit the powers of intervention to support the wider use of best practice activities within schools, and therefore may not be able to achieve the policy requirements.

Option 3

Costs

8.24 The overall estimated cost for this option is £1,700,000. In addition to the £430,000 of costs outlined for Option 2, there is an estimated £1,000,000 of costs associated with local authority support to schools, plus estimated costs of £270,000 associated with extended awareness raising in schools, evaluation and best practice costs. These costs are based on the implementation of one school improvement strategy and are transitional and would occur over a period of one year following introduction of any new statutory school improvement guidance.

8.25 The estimated costs of £1,700,000 in relation to this option would impact upon Welsh Government, local government and schools. These development costs would need to be met by the Welsh Government through the School Effectiveness Grant.

8.26 As the guidance will be statutory there could be additional follow on costs in terms of providing training for schools and providing ongoing implementation support. These costs would depend upon the complexity of the priority policy area and the level of implementation support required. Ongoing implementation support costs are estimated at £500,000 per annum (over a 3-5 year period), as the level of support is reduced and the policy becomes self sustaining.

8.27 The statutory school improvement framework will comprise of a series of guidance documents, rather than one overarching publication. Projections are based on the publication and implementation of statutory guidance in relation to one school improvement priority. Future priorities are still being identified through banding and stocktaking and a further assessment of costs will need to take place when more specific details are available.

Benefits (also see Sections 3.22; 8.1)

8.28 The potential benefits directly associated with improvements to schools guidance are very difficult to estimate. However, the broader evidence is supportive of the importance of the role of teacher quality in educational outcomes. Where effective, associated improvements could give rise to important educational benefits.

8.29 *Benefits to the current system would include:*

- statutory guidance would place a strong legal obligation on local authorities and schools to follow it unless they complete a statutory process. A move to a mandatory, standardised approach will begin to reduce the high degree of variation at local level by directing the approach to school improvement based on proven good practice;
- increased capacity for the Welsh Government to intervene, challenge and standardise performance, including addressing some of the variation in sharing good practice;
- power for the Welsh Minister to direct local specific authorities/schools to comply with the statutory school improvement guidance to address performance issues;
- maintain flexibility for local authorities to innovate at a local level, providing the contrasting approach attains the desired educational outcomes;
- a move to a statutory approach to sharing good practice will increase collaboration, providing opportunities for schools to improve;
- there would be offsetting cost reductions in the time teachers and head teachers spend in researching and developing practice for their school. For example, if a school were able to refer to quality assured statutory guidance to update an area of educational practice, this may reduce the search costs to the school of upwards of a day (an estimated minimum £100, based on the average teacher salary) for every area of school improvement. As a guide school development plans will contain several

areas of improvement set out each year, say an average of six, making a non-cashable saving of £600 per school per year, or at least £1 million worth of teacher time spent on more productive activity.

8.30 *Risks*

- guidance is not law and does not confer powers or duties. A body or person may be able to depart from statutory guidance if they have good reasons for doing so and they follow the procedure set out above. It may prove difficult to gather sufficient evidence to challenge a case for departure;
- the effectiveness of statutory guidance will depend on the quality of the drafting, whether it is well publicised, whether it represents current good practice and how effectively it is monitored. The Welsh Government will need to ensure that effective gate keeping arrangements are in place to ensure a consistent approach.

Preferred Option

8.31 In view of the evidence presented above, Option 3 is presented as the preferred course of action.

8.32 The main reasons are:

- The available evidence has repeatedly proven that the flexible approach to school improvement outlined within options 1 and 2, has failed outright.
- Though the identified costs associated with the preferred option are in excess of those of the other options, based upon comparable reforms successfully adopted in high performing countries, such an approach could give rise to much larger benefits in terms of contributing to improvements in educational outcomes which would be sufficient to support Option 3.
- This option will provide a mechanism to drive forward the Minister for Education and Skills' 20 Point Action Plan for Education in Wales to raise standards and narrow the attainment gap through a mandatory approach, based on proven best practice.
- Complimenting the work of the School Standards Unit, this approach will ensure that the Minister will be equipped to respond decisively to emerging priorities including the disparate approach to sharing best practice.
- This option will also reinforce revised Estyn inspection arrangements in identifying and disseminating sector leading practice. Estyn evidence has proven that many schools achieve very well and these schools can provide useful models to others about what works best.

- This option will still provide sufficient flexibility for local authorities to adopt an innovative approach to school improvement, but not in a way that the government does not support.
- This approach will also begin to deliver the Minister's commitment to make best practice our standard by beginning to change the culture of continuing professional development to promote excellent teaching and raise standards across Wales such as through the implementation of professional learning communities.
- A standardised approach to school improvement, through prescriptive statutory guidance, will improve school self evaluation and improvement planning and also maximise the input of localised services to support school improvement.
- This approach will not only improve the effectiveness of schools in need of additional support but will also enable successful schools to showcase leading edge practice to support wider system in Wales. A move to a more prescriptive approach, detailing the circumstances in which there can be a departure will also reduce requests to challenge the guidance.
- Option 3 will improve the quality and consistency of teaching by encouraging teachers to base their practice on techniques that have been shown to work and ensure that professional development opportunities are focussed on the priorities for school improvement. Ultimately, this will improve the learning experience of students in the classroom.
- Option 3 will also reinforce comparable provisions within the Bill to issue statutory guidance in relation to formal intervention in schools by local authorities and Welsh Ministers.
- Option 3 will lay the foundations for Wales to compete with the other high performing countries and make strides in working towards the ultimate long term benefit in creating and sustaining a culture of improvement.

School organisation

8.33 There would be one off costs of associated with the implementation of the school organisation provisions in the Bill. These would be unlikely to exceed £6,500.

8.34 The operation of local determination panels would involve an average per annum cost per local authority area which would be unlikely to exceed £2,500 (£55,000 across Wales).

Option 1: Do nothing

Costs

8.35 Although not routinely calculated, the estimated average cost (based on an estimate of staff time by grade spent on each proposal and set against the average salary costs for each grade) of a school organisation proposal determination by the Welsh Ministers is between £4,000 and £5,000. On average over the last five years, around 17 proposals have been determined by the Welsh Ministers. Therefore the current annual cost to the Welsh Government of determining proposals is up to £85,000 per annum.

8.36 There would be no additional recurring costs associated with this option. There would also be no cost transfers under this option.

8.37 If this option is taken, there is no reason to believe that the number of proposals determined would change significantly, so the annual determination costs would remain at around their current level. Taking this option would also mean that there would be no additional direct costs incurred by local authorities or others.

Benefits

8.38 The current system is well understood by those involved in it, and it provides a framework for sound decision making. However, there would be no additional benefits associated with maintaining this option.

Option 2: Do minimum

Costs

8.39 One-off additional transitional costs, which would fall on the Welsh Government, for this option only, in the 2012/13 financial year, of producing and printing new guidance on best practice, issuing amended regulations and undertaking familiarisation training for local authority officers would be unlikely to exceed £8,500 (£6,500 for guidance and £2,000 for regulations).

8.40 In terms of recurring costs, proposals which involve altering existing schools account for perhaps only one third of proposals published – proposals involving the closure or establishment of schools are more frequent and tend to be more contentious. Therefore, a large majority of the current cost of school organisation proposals, both to proposers and the Welsh Ministers, would remain, as set out above in paragraph 8.35, even if all alterations to existing schools no longer required statutory proposals.

Benefits

8.41 Eliminating the need for statutory proposals in relation to alterations to schools (for example, to increase the capacity of a school significantly) would save local authorities and other proposers the on-going costs of consulting on and publishing such proposals. Although difficult to estimate, these costs are likely to range from £2,000 to £3,000 per proposal (assuming newspaper publication costs of around £1,800 and a limited consultation exercise) up to many thousands of pounds for proposals which are very complex or contentious. Reducing the range of

prescribed alterations would also save the Welsh Ministers £4,000 to £5,000 for each proposal which no longer required determination.

Option 3: Establish an Independent Adjudicator

Costs

8.42 There would be some initial transitional costs involved in establishing an independent adjudicator including recruitment and training costs for the four or five staff members who would likely be required. These have not been calculated, but would be expected to be relatively modest.

8.43 The recurring costs of operating an independent adjudicator system would be considerable. For example, the annual running cost of the Office of the Schools Adjudicator (OSA) in England in 2010-11 amounted to around £655,000. The OSA estimated that about 24% of adjudicator time was spent on school organisation proposals in 2010-11 (the OSA also deals with issues such as admissions objections). This would suggest that the total cost of dealing with statutory proposals was around £157,000 (i.e. 24% of £655,000), or £4,249 for each of the 37 proposals determined during the same time frame (roughly equivalent to the £4,000 to £5,000 estimate per decision made by the Welsh Ministers).

8.44 On average over the last five years, around 17 proposals have been determined by the Welsh Ministers. If an adjudicator system were put in place there would be no obvious reason why the number of proposals requiring determination would change. Bearing this in mind, and taking into account the cost of the English model, the greater economies of scale involved in that model plus accommodation costs (which are not included in the running cost figures provided by the OSA) it does not seem likely that an independent adjudicator system could be operated in Wales for less than £100,000 per annum, i.e. the likely minimum cost of determining each proposal (£5,000) multiplied by the approximate number of proposals per annum (17) plus accommodation costs.

8.45 There would be no costs transfers under this option – the cost of funding the independent adjudicator would fall upon the Welsh Government just as the current cost of determinations by the Welsh Ministers does.

Benefits

8.46 As set out at option 1, the annual cost to the Welsh Government of determining proposals might currently be up to £85,000 per annum. These savings would be offset against the costs incurred through the operation of an independent adjudicator.

8.47 The principal benefit of an independent adjudicator system would be that it ensured a strong element of independent scrutiny remained in place whilst at the same time removing any possible appearance of political bias in the decision making process.

Option 4: Remove requirement for an independent decision maker

Costs

8.48 There would be no transitional costs associated with this option other than the cost of familiarisation training for local authority officers conducted by Welsh Government officials which would be unlikely to exceed £1,500.

8.49 In terms of recurring costs, there would be few identifiable additional financial costs to any party associated with this option. As proposers would determine all proposals this would, in the case of disputed proposals, result in some additional outlay for them in terms of the extra time and effort required. However, the financial cost would be very small – it seems unlikely that it could exceed the sum of a few hundred pounds in relation to any proposal.

Benefits

8.50 This option would result in a financial savings to the Welsh Government equivalent to the estimated annual average cost of determining disputed school organisation, i.e. up to £85,000.

8.51 This option would result in a streamlined procedure for the determination of all proposals which in turn would significantly reduce the time taken to process proposals. This reduction in determination times could, in some instances, result in significant savings. For example, where proposals involve the construction or alteration of school buildings, any delay caused to the construction timetable by a prolonged determination process could substantially increase construction costs. Indeed, many proposals involving the closure or amalgamation of schools generate revenue savings worth tens of thousands of pounds per annum (often through reductions in staff costs, particularly head teacher salaries) so any delay in implementation can prove costly.

8.52 Furthermore, the greater certainty engendered by the streamlined process might encourage local authorities and others to bring forward proposals at a faster rate thus delivering any resource savings associated with the proposals more quickly.

8.53 However, the full impacts of any changes in schools organisation or the timings of schools reorganisation are not readily quantifiable. Such implications would be subject to separate assessments.

Option 5: Reform the legislative process

Costs

8.54 The one off (transitional) costs of producing and printing relevant guidance on the legislation and best practice, issuing and undertaking familiarisation training for local authority officers would be unlikely to exceed £6,500. These costs would arise under this option only and would fall on the Welsh Government, in the 2012/2013 financial year with potential to cross into the 2013/14 financial year.

8.55 This option, and in particular the operation of local determination panels, would involve some additional recurring costs to local authorities. This would include allowances and expenses payable to members of the LDP, the cost of providing a clerk and the necessary administrative support, legal advice, and room hire costs.

8.56 These costs would be difficult to quantify exactly and might vary according to local circumstances and the complexity of any proposal under consideration (for example, a more complex proposal might require an LDP to meet several times whilst in other cases only one or two meetings might be necessary). However, it is considered that they might range, on a per proposal basis, from less than £500 where proposals are able to be determined with two meetings (assuming that the cost of room hire and refreshments, allowances and expenses and clerking costs does not exceed £250 per meeting) and little administrative support or legal advice, up to a likely maximum of £5,000 where a series of meetings is necessary, legal advice is required and officers are required to provide significant administrative support.

8.57 Analysis of the proposals determined by the Welsh Ministers over the last 5 years suggests that each local authority LDP would determine on average, just over 1 proposal every two years meaning that the average per annum cost of operating each LDP would be very unlikely to exceed £2,500 based on the assumptions made above. This cost might increase in the future if a higher proportion of proposals receive sufficient objections to trigger an LDP determination, or if the number of proposals published increases, but it seems unlikely that the average number of proposals determined by an LDP would exceed 1 per annum, or that the cost would exceed £5,000 per local authority per annum.

8.58 The Welsh Government would need to monitor compliance by local authorities and LDPs with their statutory requirements. The cost of doing so would be small; probably less than £1,000 per annum. In addition, the Welsh Ministers would continue to determine a small number of proposals; one a year on average at a cost of around £5,000 per annum.

8.59 There would be an element of cost transfer involved in this option in that the cost of determining disputed proposals which currently falls to the Welsh Ministers would now be borne to some degree by local authorities. These costs are set in paragraphs 8.50 and 8.56 to 8.59 above. Currently it is estimated that there is an annual cost of up to £85,000 per annum incurred by the Welsh Government for Welsh Ministers' determinations. Under this option the Welsh Government would make annual expenditure savings of approximately £77,000, whilst local authorities would incur increased expenditure, approximating £55,000 year if the number of proposals dealt with remains at the current level.

Benefits

8.60 Under this option, and based on an analysis of the proposals determined by the local authority over the last 5 years, the Welsh Ministers would be determining fewer than two proposals per annum, costing around £8,000 to £10,000 per annum in staff time (based on the estimate of average costs previously given). This would be a saving of up to £77,000 per annum (in staff resources).

8.61 As with option 4, but to a lesser extent, this option would result in a streamlined procedure for the determination of proposals, particularly for proposals involving the closure of schools with fewer than 10 pupils or the 38% of proposals which currently require determination by the Welsh Ministers but which under the new arrangements would be determined by the proposer. This in turn would reduce the time taken to process proposals. This reduction in determination times could, in some instances, result in significant savings.

8.62 For example, where proposals involve the construction or alteration of school buildings, any delay caused to the construction timetable by a prolonged determination process could substantially increase construction costs. In the case of schools with no pupils, costs associated with retaining a building and so on, would be eliminated far more quickly. Indeed, many proposals involving the closure or amalgamation of schools generate revenue savings worth tens of thousands of pounds per annum (often through reductions in staff costs, particularly head teacher salaries) so any delay in implementation can prove costly. Furthermore, the greater certainty engendered by the streamlined process might encourage local authorities and others to bring forward proposals at a faster rate thus delivering any efficiency savings associated with the proposals more quickly.

8.63 However, the full impacts of any changes in schools organisation or the timings of schools reorganisation are not readily quantifiable. Such implications would be subject to separate assessments.

Preferred Option

8.64 Reform the legislative process would result in savings to the Welsh Government. There would be some modest extra costs to local authorities associated with the operation of LDPs though these would be expected to be outweighed by efficiency savings resulting from a more streamlined process. Furthermore, this option would contribute significantly to the achievement of all five policy objectives. Therefore Option 5 is preferred.

Welsh Education Strategic Plans

8.65 There are some baseline costs which are applicable across all options.

8.66 In terms of administration costs, the annual costs to the Welsh Government associated with the submission by each local authority of a WESP for approval and monitoring is estimated (based on 3 full time equivalent (FTE) staff and associated travel costs) to be around £116,000. Annual administration costs for the local authorities are estimated to equate to around £14,000 per local authority. There are also some modest costs in respect of publication of WESPs, estimated to be a maximum of £2,000 per local authority.

8.67 In total, the annual administration costs are estimated to be around £468,000. As the WESPs are currently being prepared, approved and monitored on a non-statutory basis, these costs are already being incurred by the Welsh Government and the local authorities and will continue under all options.

8.68 The funding requirements for the WEG apply across all options in the immediate term. Based on the current level of Grant, the Welsh Government would be required to provide £5.030 million per annum and local authorities would be required to provide 33% match funding, a total of £2.47 million across all local authorities.

8.69 However, in the case of Option 2 the use of the WEG as part of the incentives relating to WESPs could potentially give rise to longer-term requirements to maintain such funding approaches.

8.70 In addition to the costs outlined elsewhere, there could be some capital funding cost implications for local authorities should local authorities need to provide more Welsh-medium school places. These capital costs are not quantifiable at this stage as they would depend on whether any requirements for new build, refurbishment or reorganisation of school buildings would be progressed. The Welsh Ministers will consider the availability of capital funding when assessing WESPs under all options.

Option 1: Do nothing: keep WESPs as non-statutory documents completed by local authorities on a voluntary basis for discussion with Welsh Ministers

8.71 Given that the WESPs would remain non-statutory and that the allocation of the WEG would not be made conditional on approval of the WESP, it is possible that some local authorities will fully implement their WESPs, while others take minimal steps. Therefore, the cost of the 'do nothing' option could vary according to the extent of local authorities' implementation of the WESPs.

8.72 In addition to the baseline costs set out above, where local authorities adhere to the non-statutory guidelines, they will incur costs for undertaking surveys to measure demand on a regular basis. The average costs of administering and analysing surveys is estimated at a maximum of £15,000 each. The guidelines recommend undertaking surveys once every 3 years. The total maximum estimated cost per annum would therefore, on average, be around £5,000 per local authority, which would equate to around £110,000 per annum across all local authorities. These costs are already being incurred by some local authorities.

Option 2: Do minimum: Link enforcement of non-statutory WESPs on local authorities with grant funding

8.73 This option would additionally involve costs associated with linking the analysis and monitoring of the WESPs to the Welsh in Education Grant. The additional administrative costs in terms of Welsh Government staff time are estimated on the basis of standard staff costs for the expected extent of work to be around £19,000 annually. These administrative costs are already being incurred by the Welsh Government.

8.74 As noted above, this option might also imply some longer-term requirements to maintain such funding approaches as part of incentivising the development and

implementation of the WESPs. Without maintained or increased levels of the WEG funding, the leverage of the Welsh Government on local authorities to submit and implement their WESPs could be limited. This option therefore involves long-term commitment to the WEG funding as a lever of government.

Option 3: Primary legislation: impose a statutory requirement on local authorities to prepare WESPs for approval and monitoring by Welsh Ministers and to make reasonable endeavours to implement their WESPs.

8.75 Over and above the baseline costs (£116,000 for the Welsh Government and £352,000 across all local authorities per annum) and the costs of the Do Nothing option (£110,000 across all local authorities per annum), there would also be some additional associated one-off (transitional) administration and legal costs for the Welsh Government for the preparation of regulations and statutory guidance, at approximately £110,000 (based on 2 FTE staff at Band F and associated travel costs). The timeline for incurring these additional (transitional) costs for the Welsh Government is likely to be January 2013 – December 2013.

Preferred option

8.76 The Welsh Government has taken responsibility for creating a more effective planning system for Welsh-medium and Welsh-language education. Future progress is predicated on the use of the WESPs and their ability to stimulate incremental, measurable improvements.

8.77 It is expected that all three options would result in some progress being made in achieving the anticipated outcomes. However, the extent and timeliness of the implementation will vary. There are potential capital funding implications for local authorities if, as a result of measuring parental demand, they need to adjust their school planning. However, though it is possible that such requirements could vary across these options, such impacts are not readily quantifiable at this stage.

8.78 Under the Do Nothing option (Option 1), there would be no effective means of enforcement on local authorities to prepare and implement a WESP. As a result, it is likely that the fragmented and reactive approach to planning and provision would continue.

8.79 Linking enforcement of non-statutory WESPs on local authorities with grant funding (Option 2) would enable Welsh Ministers to have some influence over the extent to which local authorities prepare and implement WESPs. However, as this would be dependent on grant funding, there would be continuing pressure on the Welsh Government to provide the same or higher level of grant funding to enforce the preparation of WESPs.

8.80 A statutory requirement on local authorities to prepare WESPs (Option 3) would enable Welsh Ministers to impose a statutory requirement on local authorities to prepare a WESP, to be approved and monitored by the Welsh Ministers, and to take reasonable steps to implement their WESPs. This option would ensure that the desired national planning and accountability system for Welsh-medium education is achieved.

8.81 The additional financial implications for local authorities for Option 3 would be modest in terms of staff costs and administrative time to fulfil the terms and conditions of the statutory requirement as outlined in the Bill. The presented expected advantages of this option, above those of the other considered options, lead to the determination of the use of legislation as the preferred option.

8.82 It is therefore considered that making the WESPs statutory is the most effective course of action to pursue this policy intent. Making WESPs a statutory requirement will further evidence that Welsh Ministers intend to follow through on ensuring effective local authority planning for Welsh-medium education and improved linguistic continuity and practitioner development.

Annual Parents Meeting

Option 1: Do nothing

8.83 Leaving the current arrangements as they are, which is that governing bodies hold a meeting with parents every other year, and in the in between years they ask parents if they would like a meeting, would not incur any additional costs for schools or parents other than what is already spent such as

- the cost to the school to print a notice informing parents of the meeting, or asking them if they would like a meeting;
- the time of governors and the clerk to attend a meeting,
- the time of a person to set out the meeting; and
- the travel and time costs for parents should they choose to attend.

8.84 It is very difficult to accurately reflect the costs involved as there are so many variables to take into account. For example, the cost of sending a notice to parents will depend on how many pupils in the school and how many parents need to be contacted and whether those parents have indicated that they want a printed notice or an electronic notice. In a very small school this could be as low as £15 based on a school with 30 pupils and the cost of 50p per notice, or £750 in a school with 1,500 pupils. These costs assume that all parents would want a printed copy of the notice. It is likely these costs will be reduced where parents have asked for electronic notification.

8.85 As regards the time of governors and the clerk to attend a parents meeting, this will depend on when the parents meeting is arranged. If it is held after a governing body meeting the clerk and the governors will already be present. The time cost therefore is an additional 15 minutes waiting time to see if parents attend. The cost to pay the clerk depends on who the clerk is and how they are employed. This could range from £25 per school if a clerk is employed privately up to £150 if the school has a local authority clerk. Again the cost of the time to the person setting out the room cannot be estimates as this will depend on their salary scale.

8.86 The time and travel costs to parents will vary depending on how close or far away they are from the venue for the meeting. Some parents will walk to the school; in city areas some parents may have to drive for 10-15 minutes whilst in rural areas

parents could be travelling up to an hour to get to the school. How much that cost them will depend on the size engine of the car they have and the amount of petrol used.

8.87 However, there would be no additional benefits through maintaining the current system.

8.88 Doing nothing would not achieve the Welsh Government's policy objective to remove the requirement on governing bodies to hold a parents meeting which is generally not well attended or supported by parents and to give control to parents as to when these meetings would be held. Every other year a meeting would have to continue to be arranged or the views of parents sought on whether or not to have a meeting.

Option 2: Remove the requirement to hold an annual parents meetings

8.89 This option would give rise to potential savings through avoiding currently incurred costs such as the very minor costs of meeting administration and costs of hosting annual parents meetings. In addition, there would also be some potential benefits in terms of the avoidance of the wasted time resources of governors.

8.90 However, parents are one of the major stakeholders in a school, and whilst many schools and governing bodies would welcome the removal of the need to arrange such a meeting, it removes an opportunity for parents to discuss issues of concern or have any say in the way a school is being run, and the benefits associated with such engagement. Such benefits are very difficult to estimate quantitatively.

8.91 This option also means that governing bodies would be under no obligation to hold a meeting or to engage parents and parents would not have the right to request a meeting. For many schools this could mean that the parents and governors will never meet which is likely to have a negative impact on the relationship between parents and schools.

Option 3: Give parents the right to call a limited number of meetings with the governing body

8.92 For governing bodies, given the current evidence which suggests there is a general disinterest from parents to attend meetings or lack of opportunity for a timely meeting, it is expected that very few schools will receive a request from parents for a meeting. For a majority of schools this will mean that they will not have to go through the process of arranging a meeting which is generally poorly attended (if any parents at all attend). Where this is the case, they would therefore not incur the current costs associated with resources devoted to organising such meetings.

8.93 For parents, this option clearly places the onus on them to ask the governing body for a meeting. Under the proposals parents would have to arrange for a requisite number of signatures to make the request for a meeting.

8.94 From a costs perspective, if a governing body meets the parents once a year following a request, the costs to arrange the meeting, attendance and travel costs, clerk costs and costs to parents should be similar to the costs currently incurred if the governing body arranges an annual parents' meeting which is attended by parents. Given the variances involved it is not possible to give an estimate but these costs will be negligible.

8.95 If the parents were able to request additional meetings (up to two per year), where this took place, this would be expected to lead to an increase in costs associated with the time commitment from governors, (including school staff), the clerk to the governing body and the person setting out the room for the meeting compared to what is already in place. There could also be a small increase in the administrative duties of the chair of governors and the clerk, who would be responsible for managing the meetings and taking the minutes.

8.96 There would also be some additional costs to the school to print and send out paper notices (where required) to other parents informing them of the request for a meeting and the proposed time and date. Based on the costs in paragraph 8.84 above the cost of sending out a paper notice to all parents for one meeting per year is estimated as costing £15 in a 30 pupil school where the cost of printing is 50p per notice. An additional two meetings per year would cost the school an extra £30 per year. In a school with 1,500 pupils the cost of printing a notice for all parents for one meeting per year is £750. An additional two meetings per year would cost the school an extra £1,500 per year. There would be some minor additional travel costs to governors to travel to the school for the two meetings. Parents who wished to attend the meetings would also incur some additional travel costs for the additional meetings, though again these would be likely to be relatively modest. To attend additional meetings per year would also result in a small increase in cost of time to both governors and parents. There would also be costs to the parents through organising sufficient interest to propose the meeting. Given the variances involved it is not possible to give an estimate but these costs will be negligible.

8.97 Given the various arrangements in place for clerking governing bodies which were set out in Section 8 of the Explanatory Memorandum and Regulatory Impact Assessment for the Education (Wales) Measure 2011, published on the National Assembly for Wales' website, it is not possible to accurately predict how much of an increase in cost there would be for the governing body to arrange for up to three meetings per year to be clerked as a result of a request from parents. Based on information obtained from those local authorities that clerk governing bodies, the maximum cost of clerking meetings, which are in addition to those set out in the Service Level Agreement, would be around £150 per meeting. If a governing body had three meetings per year (which is two more than is currently required under the law) this could increase the cost for a local authority clerk by £300 per school. For a private clerk, based on an amount of £25 per meeting, this would increase the costs to the school by £50.

8.98 Whilst having up to three meetings per year could potentially be more time consuming for governors to manage, it does present parents and governors with the opportunity to meet and talk about issues that are of concern to the parents. This

could potentially provide additional benefits, though these are very difficult to quantify.

8.99 Knowing that schools will be accountable to parents in this way will help them to focus on being more transparent about their plans for the development of the school and parents will be able to contribute to this process.

Conclusion and preferred option

8.100 There is no benefit in option one which is to require governing bodies to continue to hold an annual meeting with parents which is not supported or valued by the parents in many schools in Wales.

8.101 Option two, to remove the requirement for governing bodies to hold an annual meeting with parents and not replace it with an alternative is not a viable option as it means that schools would not be required to engage parents, and parents would not have any rights to request a meeting with the governing body.

8.102 Our preferred option is option three which is to give a quorum of parents the right to request up to three meetings per year as this would ensure that parents could control the timing of these meetings and have them when they have issues they wish to discuss. The parents would also be able to determine the agenda and issues to be discussed at the meeting.

School-based counselling

Option1: Do nothing

8.103 The continuation of a ring fenced grant would ensure continued provision of school-based counselling as it has been established under the Strategy (2008). With the continuation in the current administration arrangements and level of service provision there are no additional costs or benefits associated with this option.

8.104 There are currently approximately 160 counsellors working in secondary schools, secondary special schools and pupil referral units across Wales. Data collected during the past 6 school terms indicates that, over 10,500 young people have completed 11,043 episodes of counselling, with a median cost per young person of £449.40 and median cost per session of £86.90.

8.105 Advantages

- This option would have the advantage of ensuring that local authorities are spending a minimum amount of funding on counselling;
- The current situation has been successful with each local authority ensuring that there is access to formal one-to-one counselling in all secondary schools in their area;
- The terms and conditions of the grant ensures regular monitoring and evaluation by the local authorities with annual reports and detailed proposals submitted to the Welsh Government;

- The terms and conditions of the grant ensures anonymised termly feedback of demographic and outcome data of young people accessing counselling which give the Welsh Government useful information on an all Wales basis;
- The terms and conditions ensure that all services work within an ethical framework e.g. the British Association for Counselling and Psychotherapy and provides for regular supervision of and Continuous Professional Development for all counsellors working within schools in Wales;
- There is a consistency of approach across Wales in line with the Operating Toolkit for School-based Counselling Services (2009).

8.106 Disadvantages

- It would not follow the expectation that ring-fenced grants should operate only for a few years and that there should be local discretion on the level of funding;
- The opportunity would be lost to remove the bureaucratic burdens associated with administering the grant;
- The grant could be redirected into a new priority within the Welsh Government, leaving the local authorities in an impossible position in trying to maintain counselling services in their area.

Option 2: Transfer funding into the RSG without legislation

8.107 This option would result in administrative cost savings to the Welsh Government. Within the Welsh Government administering the grant involves annual staff costs estimated to be in the region of £29,000. These resources would be able to be redirected elsewhere within the Department.

8.108 It is extremely difficult to estimate the costs associated with administering the grant scheme at local authority level given that the work involved includes bid preparation costs, ongoing administration costs and internal audit costs. Based on previous work undertaken within the Welsh Government to estimate the costs of administering specific grant schemes it is assumed that administrative costs would be at a level of around 2.5% of the value of the grant, which would amount to around £112,000. As some of the administration work would no longer be required an element of this resource would be able to be redirected within the local authority.

8.109 Advantages

- Transferring the funding without legislation would provide local authorities with the flexibility to spend the funding according to local need.
- Reduced bureaucracy (less data collection exercise/less paperwork).
- More streamlined grant funding consistent with the principles of Enabling Government.
- After phasing and/or 3 years, allocations would rise in line with expenditure.

8.110 Disadvantages

- There is a risk that the funding could be diverted into a range of activities which would not be consistent with the Welsh Government aim to have counselling provision available to school pupils (page 2 School-based Counselling Services in Wales a National Strategy 2008).
- Children and young people may not receive the support they need to support their emotional health and wellbeing.
- Amount of funding is set at time of transfer and cannot be altered once transferred.
- After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation but the amount could be notionally calculated if needed.

Option 3: Transfer funding into the RSG and introduce legislation

8.111 This option would result in administrative cost savings to the Welsh Government relating to annual staff costs savings estimated to be in the region of £29,000. These resources would be able to be redirected elsewhere within the Department.

8.112 Again, as with option 2 there would be administrative cost savings to the local authority as some of the administration work would no longer be required. This resource would be able to be redirected within the local authority.

8.113 Advantages

- Transferring the funding underpinned by legislation will firmly embed the Welsh Government's policy of school based counselling in Wales and ensure that young people continue to have the support they have had since the introduction of the Strategy in 2008.
- The duty would largely formalise existing practice. The existing level of budget provision at the point of transfer should therefore provide for reasonable provision, given that there is currently a service available in all secondary schools;
- It would also provide local authorities with the flexibility to spend the funding according to local need;
- It would provide local authorities with the flexibility to spend the funding according to local need in line with statutory guidance on the provision of formal counselling within an ethical framework.
- It would ensure that anonymised outcome and output data continues to be submitted to the Welsh Government. This provides valuable information on a profile of young people accessing counselling.
- Reduced bureaucracy (less data collection exercise/less paperwork).
- More streamlined grant funding consistent with the principles of Enabling Government.
- After phasing and/or 3 years, allocations would rise in line with expenditure.

8.114 Disadvantages

- There is the risk that a local authority might provide services at a lower level than under the current arrangements. In these circumstances however, the LA would still need to demonstrate that the provision it made was reasonable. The continued collation of anonymised demographic and outcome data would indicate whether the provision was reasonable.
- Amount of funding is set at time of transfer and cannot be altered once transferred.
- After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation but the amount could be notionally calculated if needed.

Preferred Option

8.115 Taking into account the potential administrative cost savings, and broader advantages, disadvantages and risks with each option, Option 3 is determined to be the preferred option.

Free breakfast initiative

8.116 The Primary School Free Breakfast Initiative has been administered via a specific grant to local authorities since September 2004. Payments are made termly in arrears. The grant is complex to administer for example there are separate sub-heads for funding including food per day per child; rate per day for supervisors (number of supervisors based on ratio of staff to pupils); operational costs per term; training costs for specified courses; CRB checks; set up (dishes, toasters etc) and replacement costs. Transferring the funding to RSG, underpinned by legislation, would reduce the bureaucracy (less data collection exercises/less paperwork) involved in running the grant scheme, both in the Welsh Government and local authorities, in line with the Front Line Resources Review. The current funding mechanism does not provide any incentive to improve value for money – this is more likely to happen when the funding is provided as part of RSG. For example, under the current grant scheme local authorities are able to claim a standard amount of £1,000 (for up to 150 pupils) for initial set-up costs per school. Some schools may have small numbers e.g. 10 children, others larger; e.g. 80, although both would receive the same amount for set-up. A similar arrangement exists for operational costs where an amount of £500 per term can be claimed per school to support the operation of the scheme (includes collation of data and arranging training) regardless of number of pupils involved. Whilst this standardised funding model enables the scheme to be administered more effectively by Welsh Government it does not necessarily deliver value for money as it does not recognise differing levels of need. By managing the funding at a local level, local authorities would be able to establish the level of need in individual schools and make decisions based on local knowledge.

8.117 At present funding is allocated to local authorities based on demand with a few local authorities having more than 80% of schools involved and with one having less than 2%. As a consequence the funding when transferred to the RSG will result

in some local authorities having more funding than they currently receive via a specific grant and others less, and a damping mechanism is likely to be required.

8.118 For all of the options the budget includes provision of £10.7m, £12.7m and £14.7m p.a. for the period 2011-14. This rising baseline provides for an increase in demand over the 3 year period.

Option 1: Do nothing

8.119 Under the specific grant scheme a local authority will receive up to £5,000 per term for administration of the scheme. The amount is dependent on the number of schools participating in the initiative during the term. During 2010-11 a total of around £185,000 was paid to local authorities to administer the scheme. This equates to 1.65% of the grant paid out during the same period.

8.120 For this option, associated costs would change in line with the factors identified in paragraph 3.56. Under the current grant scheme annual administration costs would be expected to continue at similar levels to that for 2010-11. If a 100% of schools were to participate the maximum that could be claimed for annual administration costs would be £229,500.

8.121 Advantages

- Where there is a request by a primary school for free breakfasts and there is demand by pupils attending that school the Welsh Government will provide funding as outlined above;
- The current approach has been successful and the Annual School Census 2011 indicated that 1,052 primary schools reported that they were providing free breakfasts.
- The terms and conditions of the grant requires termly monitoring by the local authorities;
- The terms and conditions of the grant require that this provision is provided within a common framework which facilitates a consistent approach across Wales.

8.122 Disadvantages

- It would not follow the expectation that ring-fenced grants should operate only for a few years and that there should be local discretion on the level of funding;
- The grant scheme is bureaucratic to administer;
- The grant scheme uses a standardised funding model and does not take into account actual costs associated with delivering the initiative at a local level. For example, salary costs will vary but a standardised hourly rate of £8.44 is reimbursed by the Welsh Government for breakfast staff.
- The grant scheme does not encourage efficiencies in operating the initiative e.g. a breakfast club catering for 20 children of primary age could, using the funding model, employ three staff whereas they may only require two.

- Difficult to effectively manage a demand led budget across 22 local authority areas.

Option 2: Transfer funding to RSG without legislation:

8.123 This option would provide the opportunity to achieve some savings associated with administration costs.

8.124 Within the Welsh Government, administering the grant involves annual staff costs in the region of £15,000. These resources would be able to be redirected elsewhere within the Department.

8.125 During 2010-11 a total of £185,000 was paid to local authorities to administer the scheme; some of the work would no longer be required, though it is difficult to firmly establish at this stage what proportion this might be. However, some resource would be able to be redirected within the local authority.

8.126 The use of a damping mechanism could potentially results in some resource implications, though at this stage any such implications have not been assessed.

8.127 Advantages

- Transferring the funding without legislation would provide local authorities with the flexibility to spend the funding according to local need.
- Less bureaucracy (less data collection exercise/less paperwork).
- More streamlined grant funding consistent with the principles of Enabling Government.
- After phasing and/or 3 years, allocations would rise in line with expenditure.

8.128 Disadvantages

- There is a risk that the funding could be diverted into a range of activities which would not be consistent with the Welsh Government commitment to maintain this initiative.
- Amount of funding is set at time of transfer and cannot be altered once transferred.
- Allocations would have to be based on a formula rather than direct cost, but this can be phased in over a 3 year period.
- After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation but the amount could be notionally calculated if needed.

Option 3: Introduce legislation and transfer funding to RSG

8.129 For this option, the budget would be transferred to RSG at a point when it had been increased by £2m allowing for continued expansion of breakfast provision.

8.130 As for option 2, this option would provide the opportunity to achieve some savings associated with administration costs.

8.131 Within the Welsh Government, administering the grant involves annual staff costs in the region of £15,000. These resources would be able to be redirected elsewhere within the Department.

8.132 During 2010-11 a total of £185k was paid to local authorities to administer the scheme; some of the work would no longer be required. Therefore some resource would be able to be redirected within the local authority.

8.133 **.Advantages**

- Transferring the funding underpinned by legislation would ensure that where demand exists, local authorities will provide or continue to provide free breakfasts unless it is unreasonable to do so;
- The duty would largely formalise existing practice;
- The budget to be transferred to RSG should provide for existing provision to continue and for more schools/children to participate (unless it was unreasonable to do so);
- It would provide local authorities with the flexibility to spend the funding according to local need in line with statutory guidance on the provision of free breakfasts;
- Less bureaucracy (less data collection exercise/less paperwork).
- More streamlined grant funding consistent with the principles of Enabling Government.
- After phasing and/or 3 years, allocations would rise in line with expenditure.

8.134 **Disadvantages**

- There is a possibility that local authorities might decide not to provide or continue to provide breakfast. In these circumstances however, the authority would need to demonstrate that it would be unreasonable to make this provision available. The continued collation of data through the Annual School Census would indicate whether the provision was reasonable.
- Amount of funding is set at time of transfer and cannot be altered once transferred.
- Allocations would have to be based on a formula rather than direct cost, but this can be phased in over a 3 year period.
- After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation but the amount could be notionally calculated if needed.

Preferred Option

8.135 Taking into account the potential cost savings, and other advantages, disadvantages and risks associated with the options, Option 3 is determined to be the preferred option as it would ensure the continuation of this provision when funding is transferred to the Revenue Support.

Flexible Charging for School Meals

Option 1: Do nothing

8.136 The Do Nothing option would not give rise to additional costs or benefits, maintaining the existing arrangements.

8.137 Advantages

- Systems established at local authority and school level to charge every person the same price for the same quantity of the same item.

8.138 Disadvantages

- The current approach does not allow meal providers to vary prices or to offer discounts. For example if there are three children of school age in the same family and the charge per day per meal is £2, this could cost the family £30 per week. There is no scope to reduce the charge for the second and third child.
- There is no cap on the amount that can be charged to pupils for a school meal.
- This approach restricts local authorities' and schools' ability to be innovative in seeking to increase the take-up of school meals and to tackle poor diet.

Option 2: Utilise the Power to Innovate

8.139 It is anticipated that there would be some initial set up and ongoing costs depending on how the power to innovate is used at a local level. Costs might include staff costs for schools and local authorities, Welsh Ministers' time for evaluating each application, administration, monitoring and systems costs. It is not possible to estimate what those costs would be, given the range of approaches that could be used.

8.140 The benefits associated with the use of a Power to innovate would depend on the nature and use of proposed flexible charging schemes. The full impacts of schemes would need to be assessed in the light of specific proposals.

8.141 Advantages

- Legislation exists to facilitate the piloting of flexible charging for school meals.

8.142 Disadvantages

- This approach is bureaucratic. The power to charge flexibly is dependent on:

- (i) local authorities (or governing bodies with a delegated budget) making an application to the Welsh Ministers to pilot flexible charging; and
 - (ii) the Welsh Ministers being satisfied that the requirements to make an Order under the 2002 Act are satisfied.
- This process would be time-consuming and would take significant forward planning by schools and the local authority who must consult persons set out in section 4(2)) of the 2002 Act before submitting an application. This would have resource implications for the Welsh Government, schools and local authorities;
 - Each case must be handled individually, and each Order is time-limited (generally lasting for a maximum of 3 years);
 - the policy intention for a universal power would not be achieved unless all local authorities in Wales and governing bodies of schools with delegated budgets make an application to pilot flexible charging and the Welsh Ministers make an Order in relation to those authorities.

Option 3: Amend existing legislation

8.143 It is anticipated that there would be some initial set up and ongoing costs, for example, administration, monitoring and systems costs, depending on the flexible approach that is adopted at a local level. Given the range of approaches that could be used costs will vary. It is therefore not possible to give accurate costings. However, if a school meal provider were, for example, to allow the new intake to have free meals for a week it could cost in the region of £1.80 per day per child. If we assume 30 children in a class and 100% take-up that would cost $30 \times 5 \times £1.80 = £270$ per school. This does not take into account that some children may already be eligible for free school meals; not all children may take-up the offer of a free school meal and may prefer to bring a packed lunch; number of pupils per school will vary. The saving associated with collecting and banking the dinner money for these pupils could be offset against any administration costs. In terms of ongoing monitoring, whilst there would be some costs it is anticipated they would be minimal given school meal providers would already collect some data on take-up.

8.144 The benefits associated with this option would depend on the nature and use of proposed flexible charging schemes. The full impacts of schemes would need to be assessed in the light of specific proposals.

8.145 Given the intention to cap the price charged to pupils, the use of this flexibility by local authorities would have financial implications for them, and therefore potential impacts on other services, given fixed budgets. Again, this would need to be considered in respect of specific proposals where these are made.

8.146 Advantages

- The price charged to pupils for a school meal would be capped at the cost of producing that meal;
- Discounts and promotional offers could be used to encourage take-up of healthier options;

- This provision could be used flexibly to meet local needs - for example, a local authority could decide to extend free school meals to include families who meet specific criteria;
- Potentially increased take-up of school meals.

8.147 **Disadvantages**

- School meal providers would have to assess the impacts of the specific proposals to establish whether the flexible approach they are considering adopting would be beneficial. This would have some resource implication
- Depending on the flexible approach used, school meal providers would need to subsidise the cost of the school meal, this could be short, medium or long term. Catering budgets are tight, and the cost of subsidising school meals could deter some local authorities from using flexible charging. However, at a more strategic level, having more children and young people eating a healthy balanced diet and developing good eating habits could reduce the amount spent on tackling obesity;
- Again, depending on the flexible approach used, there could be some administration challenges, for example where a family has three children in school and the children attend different schools within the local authority area.
- There is a risk that charging different pupils different amounts for the same or similar meals might be perceived as unfair by parents whose children pay full price for meals, and give rise to complaints.

Preferred option

8.148 Taking into account the relative costs, benefits, disadvantages and advantages on balance Option 3 would be the preferred option. This option would provide the flexibility to be innovative in trialling approaches to increasing uptake of school meals alongside wider work on improving the nutritional standards of school food and combating child poverty. It also ensures that the charge for a school meal cannot exceed the costs associated with its production.

9. Competition Assessment

9.1 The provisions within the Bill will not affect business, charities and/or the voluntary sector.

9.2 There is therefore no need for the competition filter to be applied in this case.

10. Post implementation review

Intervention of Schools causing concern

10.1 The Welsh Government will review the legislation one year on from implementation seeking views of Estyn and local authorities on its impact.

10.2 Estyn will continue to be responsible for inspecting schools as part of its inspection cycle and for considering whether the school is failing to give their pupils an acceptable standard of education and is causing concern. The Welsh Government will continue to monitor the number and circumstances of schools causing concern.

10.3 The School Standards Unit through its stock takes and banding work will have a role in monitoring school standards.

10.4 Officials engage with a variety of stakeholders in a number of different ways including, meetings, conferences and correspondence. School improvement and intervention will continue to be included in the Department for Education and Skills dialogue with stakeholders including Estyn, Welsh Local Government Association, Association of Directors of Education (ADEW) Regional Consortia and local authorities. We will continue to collect data on schools causing concern to ascertain whether the legislation has led to an improvement in practice.

School Improvement

10.5 INTERNAL

- **School Standards Unit**
Review results of ongoing stock take exercises conducted by the School Standards Unit to monitor the sharing of best practice and evaluate policy implementation.
- **Quality Assurance Groups**
The Learning Improvement and Professional Development (LIPD) Division have appointed a Quality Assurance Group to lead the development of high reliability teaching strategies. In addition, LIPD will establish a Gatekeeping Group, comprising of serving practitioners to test draft statutory school improvement guidance prior to issue.
- **Non Compliance**
Prior to the issue of statutory school improvement guidance, LIPD will identify policy/legal contacts to handle written requests from school authorities to depart from statutory guidance.

10.6 EXTERNAL

- **Estyn Advice**
Review evidence within the Estyn Annual Report 2013-14 to assess improvements in terms of school self evaluation and improvement

planning and increased leading sector practice. Commission bespoke Estyn research focusing specifically on school improvement and the impact on classroom practice.

- **Independent evaluations**
Longer term review of policies impacting on the school improvement agenda i.e. high reliability teaching strategies; professional learning communities.
- **Ongoing review of delivery of Minister's Top 20 Priorities**
External Stakeholder Group.
- **Review of targets outlined in the report on the Structure of the Delivery of Education in Wales (Vivian Thomas).**
Possibility of a further review in 2013.
- **Impact Assessment – Programme of School Reform**
Longer term assessment of the impact of school improvement tools, strategies and techniques and the overarching Programme of School Reform.

School Organisation

10.7 The proportion of school organisation decisions taken at the local level will be monitored through the ongoing analysis of Welsh Government data on school organisation proposals, the latter being gathered from the information that proposers and determiners will be required by provisions in the Bill to send to the Welsh Ministers at various points in the new statutory process.

10.8 Greater local authority effectiveness in the planning of school places will be monitored by reference to measurements which include:

- the number of local authorities with more than 10% of their school places surplus (by analysis of the local authority school places data provided annually);
- the number of local authorities rated good by Estyn for school organisation planning in Estyn local authority inspections (by annual analysis of Estyn local authority reports) ; and,
- the average time taken for published proposals to receive final determination (by an ongoing analysis of Welsh Government school organisation data).

10.9 Findings arising from this monitoring would determine the need for any future review of the new legislative framework. It is unlikely that any conclusions about the need for a review could be made until the system has been properly embedded and sufficient data obtained. This is would potentially be for a period of three years or more. Therefore no general review would be likely to take place before 2016.

10.10 In the meantime, it is possible that a review or reviews focussing specifically on aspects of the regulated alterations might be undertaken should that be necessary in the light of ongoing policy developments.

Welsh in Education Strategic Plans

10.11 Once the proposed Bill and subordinate legislation is in place progress on implementing the new legislation and its impact will be monitored through annual monitoring meetings with representatives of the local authorities. Progress will also be discussed at the annual Ministerial Advisory Group on the Welsh-medium Education Strategy, which includes representatives of all phases of education and training.

10.12 In relation to improving standards of education, the Welsh Government continuously monitors the efficiency and effectiveness of local authority school provision through the collection of data and Estyn inspection evidence.

10.13 The Welsh-medium Education Strategy will be subject to full evaluation, which will commence in 2012. A formal review of the Strategy will take place in 2015, which will include reviewing the effectiveness of the WESPs in improving the planning of Welsh-medium education and in achieving the outcomes set out in Section 3.

Annual Parents Meeting

10.14 Officials will monitor the impact of the new legislation through our regular meetings stakeholder/official meetings. Officials meet representatives of the Association of Directors of Education in Wales Governor Support Officers' network three times a year and attend their annual conference, and meet quarterly with Governors Wales.

School-based counselling

10.15 Officials will monitor the impact of the new legislation through the anonymised demographic and outcome data on children and young people accessing counselling provided by local authorities.

Free Breakfast Initiative

10.16 Schools will continue to provide take-up data annually in the form of a Pupil Level Annual School Census return to the Welsh Government.

Flexible Charging of School Meals

10.17 Following 12 months after commencement of this legislation the Welsh Government would seek feedback from local authorities as to whether they have used this power and if so in what way and what was the impact. Given the scale of use of flexible changing the requirement for more formal assessments of the impacts may also be subsequently considered.

ANNEX A – EXPLANATORY NOTES

Introduction

1. These Explanatory Notes relate to the School Standards and Organisation (Wales) Bill introduced into the National Assembly for Wales on 24 April 2012.
2. They have been prepared by the Welsh Government’s Department for Education and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be, a comprehensive description of the Bill. Where a section of the Bill does not seem to require any explanation or comment, none is given.
4. The powers to make the Bill are contained in Part 4 and Schedule 7 of the Government of Wales Act 2006. The National Assembly for Wales has the legislative competence to make provision for and in connection with School Standards and Organisation Bill by virtue of Schedule 7, subject 5 (education and training) and subject 9 (health and health services).
5. In these Explanatory Notes, “the 1998 Act” means the School Standards and Framework Act 1998.

Commentary on Sections

Part 1 - Introduction

Section 1 – Overview of this Bill

6. This section provides an overview of the key provisions of the Bill. The Bill has 6 parts and 5 schedules.

Part 2 - Standards

Chapter 1 - Intervention in Conduct of Maintained Schools

7. This Chapter, and Chapter 2 of Part 2, reforms the existing law in respect of intervention by local authorities and Welsh Ministers in the conduct of schools maintained by local authorities and intervention by Welsh Ministers in the exercise of education functions by local authorities.
8. Generally, it will be for the local authority to take action in respect of schools causing concern in the first instance, and the Welsh Ministers will generally only take action where the authority has failed to do so, or where it has taken action, it has done so inadequately.

Grounds for intervention

Section 2 – Grounds for intervention

9. This section sets out the eight grounds for intervention by a local authority or the Welsh Ministers in a maintained school.

10. The grounds for intervention set out in this section replace the grounds set out in section 15(2)(a) of the School Standards and Framework Act 1998 (“the 1998 Act”), with amendments. In addition grounds 5 and 6 are based on the Welsh Ministers’ intervention powers in sections 496 and 497 of the Education Act 1996 (governing body’s unreasonable action or failure to comply with a duty). Replacing provisions of sections 496 and 497 of the Education Act 1996 here means that local authorities as well as the Welsh Ministers can intervene in the conduct of a maintained school on the basis of a governing body’s failure to comply with a duty or its unreasonable action. Grounds 5 and 6 also now include reference to a head teacher’s failure to comply with a duty or unreasonable action.

Intervention by a local authority

Section 3 – Warning notice

11. This section provides that if one or more of Grounds 1 to 6 set out in section 2 exist the local authority may give a warning notice to the governing body of a school, and specifies what information a warning notice must contain. The warning notice is generally the start of the process of intervention by a local authority in a school and may lead to the powers of intervention being exercised by it.

Section 4 – Power to intervene

12. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by a local authority. The powers of intervention are set out in sections 5 to 9.

13. Where a local authority is satisfied that one or more of Grounds 1 to 6 exist, and it has complied with the warning notice procedure set out in section 3, then it may exercise its powers of intervention. However, if a local authority believes that one or more of Grounds 1 to 6 exist and also believes there is a related risk to health and safety of any person that calls for urgent action, or that the governing body is unlikely to be able to comply or secure compliance with a warning notice then it does not have to comply with the warning notice procedure before exercising its powers of intervention.

14. In addition, the local authority may exercise its powers of intervention if it is satisfied that Grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the local authority does not have to issue a warning notice.

Section 5 – Power to require governing body to secure advice or collaborate

15. This section provides a new power for a local authority to direct the governing body of a school to make arrangements or enter into a contract for the provision of advisory services or to collaborate in accordance with section 5(2) of the Education (Wales) Measure 2011, so as to improve the school's performance.

Section 6 – power to appoint additional governors

16. This section replaces the intervention power in section 16 of the 1998 Act, and provides local authorities with a power to appoint additional governors to the governing body of a maintained school.

Section 7 – Power of local authority to constitute governing body of interim executive members

17. This section replaces the intervention power in section 16A of the 1998 Act. It provides local authorities with a power to appoint a specially constituted governing body in place of the existing governors at a school where the local authority has a power to intervene. The specially constituted governing body is known as an interim executive board and it will take over the running of the school. Schedule 1 makes further provision about interim executive boards.

Section 8 – Power of local authority to suspend right to delegated budget

18. Under section 49 of the 1998 Act all maintained schools have a right to a delegated budget, which means that their governing bodies are entitled to manage the school's budget. This section replaces the intervention power in section 17 of the 1998 Act, and provides a power for local authorities to suspend a school's right to a delegated budget if a local authority has the power to intervene in the school.

Section 9 – General power to give directions and take steps

19. This section provides a general power for local authorities to issue such directions to the governing body or head teacher of a school it maintains as it thinks appropriate and to take any other steps when one or more of the grounds for intervention exist.

20. This section replaces section 62 of 1998 Act (*local authority's power to prevent a breakdown of discipline*). It also provides for local authorities to have powers similar to the Welsh Ministers' intervention powers in sections 496 and 497 of the Education Act 1996 (but unlike sections 496 and 497, the power to intervene here is not limited to those cases where Grounds 5 or 6 exist).

Intervention by the Welsh Ministers

Section 10 – Warning notice

21. This section sets out the circumstances in which Welsh Ministers may give a formal warning notice to a maintained school. A warning notice is generally the start

of the intervention process by the Welsh Ministers in a school , and may lead to the Welsh Ministers powers of intervention being exercised.

22. The Welsh Ministers may issue a warning notice to the governing body of a school where one or more of Grounds 1 to 6 (set out in section 2) exist, but the local authority has not given a warning notice or has done so in terms the Welsh Minister think are inadequate. The warning notice will explain to the governing body the reasons why it is being given and the action that the governing body should take.

Section 11 – Power of Welsh Ministers to intervene

23. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 12 to 17.

24. Where the Welsh Ministers are satisfied that one or more of Grounds 1 to 6 exist, and they have complied with the warning notice procedure set out in section 10, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of Grounds 1 to 6 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, or that the governing body is unlikely to be able to comply or secure compliance with a warning notice, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

25. In addition the Welsh Ministers may exercise their powers of intervention if they are satisfied that Grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the Welsh Ministers do not have to comply with the warning notice procedure.

Section 12 – Power to require governing body to secure advice or collaborate

26. This section provides a mirror power to that of the local authority contained in section 5 (*power to require governing body to secure advice or collaborate*).

Section 13 – Power of Welsh Ministers to appoint additional governors

27. This section provides a mirror power to that of the local authority contained in section 6 (*power to appoint additional governors*).

Section 14 – Power of Welsh Ministers to constitute governing body of interim executive members

28. This section provides a mirror power to that of the local authority contained in section 7 (*power of local authority to constitute governing body of interim executive members*)

Section 15 – Power of Welsh Ministers to direct federation of schools

29. This section replaces the intervention power in section 18B of the 1998 Act and provides the Welsh Ministers with the power to issue directions relating to the

federation of schools. A federation of schools is the grouping of two or more schools under a single governing body.

Section 16 – Power of Welsh Ministers to direct closure of school

30. This section replaces the intervention power in section 19 of the 1998 Act and provides the Welsh Ministers the power to direct the closure of a school if it has the power to intervene on the basis of Ground 8 (school requiring special measures). Where the Welsh Ministers direct the closure of a school under this section there is no need for a local authority to make proposals to discontinue the school under Part 3.

Section 17 – General power to give directions and take steps

31. This section provides a mirror power to that of the local authority in section 9 (*general power to give directions and take steps*).

Sections 18, 19 and 20 and Schedule 1 – Supplementary

32. Section 18 introduces Schedule 1 which makes further provision in relation to interim executive boards (constituted following a direction under section 7 or 13). It deals with the transition from a normally constituted body to one consisting of interim executive members, and also the transition from a governing body consisting of interim executive members back to a normally constituted governing body. During the period in which the interim executive members are in post they must discharge the functions of the normally constituted governing body members. This means they are subject to the same law as normally constituted governing body members. However, they are not subject to the law that applies in relation to constitution and procedure of a governing body in regulations made under section 19(2) or (3) of the Education Act 2002 (paragraph 13). However, regulations made under certain paragraphs of section 19 of the 2002 Act may be applied to the board. For example, where regulations made partly under section 19(2) or (3) made provision in relation to school staffing issues such provisions could be applied to the board.

33. Section 19 provides that a head teacher or governing body of a school must comply with a direction given to them by a local authority or the Welsh Ministers under this Chapter. A direction must be in writing and may be enforced by a mandatory order of a court.

34. Section 20 provides a power for the Welsh Ministers to issue guidance to local authorities in relation to the exercise of its functions under Chapter 1 of Part 2 of this Bill. Accordingly, a local authority must have regard to such guidance.

Chapter 2 - Intervention in Local Authorities

35. This Chapter sets out the circumstances in which the Welsh Ministers can intervene in the way a local authority is exercising its education functions (which are those functions set out in Schedule 36A to the Education Act 1996)

Section 21 – Grounds for intervention

36. This section sets out the grounds for intervention that must exist for the Welsh Ministers to intervene in a local authority. These grounds replace the grounds for intervention in local authorities set out in sections 496 to 497A of the Education Act 1996 for Wales. If one or more these grounds exist, the Welsh Ministers will be able to begin the process for intervention.

37. Sections 496 to 497A of the Education Act 1996 will now apply only to local authorities in England.

Section 22 – Warning notice

38. This section provides that if one or more of the three grounds set out in section 21 exist, the Welsh Ministers may issue a warning notice to the local authority and specifies what information a warning notice must contain. The warning notice must, among other things, explain why the Welsh Ministers consider the grounds for intervention exist and what the local authority must do to deal with them. A warning notice is generally the start of the intervention process by the Welsh Ministers in a local authority, and may lead to the Welsh Ministers powers of intervention being exercised.

Section 23 – Power of Welsh Ministers to intervene

39. This section sets out the circumstances where the powers to intervene in a local authority may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 24 to 28.

40. Where the Welsh Ministers are satisfied that one or more of Grounds 1 to 3 exist, and they have complied with the warning notice procedure set out in section 22, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of Grounds 1 to 3 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, or that the local authority is unlikely to be able to comply or secure compliance with a warning notice, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

Section 24 – Power to require local authority to obtain advisory services

41. This section replaces the intervention power in section 63 of the Education Act 2002 and provides a power for the Welsh Ministers to require the local authority to obtain advisory services from a third party.

Section 25 – Power to require performance of functions by other persons on behalf of authority

42. This section provides a power for Welsh Ministers to require a local authority to use the services of a third party to carry out its functions.

Section 26 – Power to require performance of functions by Welsh Ministers or nominee

43. This section allows the Welsh Ministers to require that a local authority's functions are carried out by the Welsh Ministers or by a person nominated by the Welsh Ministers.

Section 27 – Power to direct exercise of other education functions

44. This section enables the Welsh Ministers, when issuing directions under sections 25 or 26, to include directions that relate to any of the local authority's education functions, and not just those functions to which the powers to intervene relate.

Section 28 – General power to give directions and take steps

45. Where the power to intervene exists this section provides a general power to give directions to a local authority and take steps in relation to it. The taking of steps enables Welsh Ministers to do other things they think might help to deal with the grounds for intervention other than making a direction.

Section 29 – Directions

46. This section provides that a local authority must comply with a direction. A direction must be in writing and may be enforced by a mandatory order of a court.

Section 30 – Duty to co-operate

47. This section, which requires local authorities and governing bodies to assist with the action required to comply with directions, replaces section 497AA of the Education Act 1996 (*power to secure proper performance: duty of authority where directions contemplated*) with some amendments.

Section 31 – Powers of entry and inspection

48. This section, which sets out rights of access in connection with the carrying out of directions, replaces section 497B of the Education Act 1996 (*power to secure proper performance: further provisions*) with some amendments.

Chapter 3 – School Improvement Guidance

49. This Chapter provides for the Welsh Ministers to issue guidance to head teachers, governing bodies and local authorities about how to exercise their functions so as to improve standards of education.

Section 32 - Meaning of “school authority”

50. This section defines the term “school authority” to mean a local authority, governing body or head teacher of a maintained school in Wales. These school authorities are best placed to improve standards of education in schools.

Section 33 - Power to issue school improvement guidance

51. This section provides a power for the Welsh Ministers to issue guidance to school authorities setting out how they are to improve the standards of education in schools.

Section 34 - Consultation and National Assembly for Wales procedures

52. This section sets out the procedure that the Welsh Ministers must follow before issuing school improvement guidance. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the guidance before the National Assembly for Wales.

Section 35 - Duty to follow school improvement guidance

53. This section places a duty on school authorities to comply with the guidance issued under section 33.

54. This section does allow for school authorities to depart from that guidance in certain circumstances in order to provide for a degree of flexibility and innovation. Where a school authority wishes to depart from the guidance it must issue a policy statement detailing its alternative policy for exercising the education functions concerned. It must then follow that alternative policy. If there is a partial departure from the guidance, school authorities will have to adhere to both the policy statement and (in so far as the policy statement does not deal with a matter) the guidance.

55. In addition the duty to follow the school improvement guidance or a policy statements will not apply if to do so would lead to irrational results.

Section 36 - Policy statements: requirements and ancillary powers

56. This section makes further provision in relation to the policy statements that a local authority or governing body must issue before they are allowed to depart from the school improvement guidance.

Section 37 - Directions

57. Where the Welsh Minister consider that the alternative course of action set out in a school authority's policy statement is not likely to improve educational standards they may issue a direction to the school authority requiring it to comply with the guidance. A direction must be issued in writing and may be enforced by a mandatory order.

Part 3: School Organisation

58. Part 3 reforms and brings together in one place the law relating to school organisation for Wales; requires the publication of a new Code on School Organisation; and, creates a new framework for the determination of proposals which receive objections, including the setting up of local determination panels and a simplified process for proposals to close schools with fewer than 10 pupils.

Chapter 1: The Code on School Organisation

Section 38 - School Organisation Code

59. This section creates a requirement for the Welsh Ministers to issue and publish a code (or codes) on school organisation (“the Code”) with which the persons listed at *subsection 2* must act in accordance if the Code requires them to do so. The Code may also include guidelines setting out aims, objectives and other matters to which the named persons must have regard.

Section 39 - Making and approval of School Organisation Code

60. This section sets out the procedure that the Welsh Ministers must follow before issuing the Code. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the Code before the National Assembly for Wales.

Chapter 2: School Organisation Proposals

Section 40 - Restriction on establishment, alteration and discontinuance of maintained schools

61. This section requires that the opening or closing of a maintained school, or the making of a significant alteration (known as a ‘regulated alteration’) be done in accordance with the processes set out in this Part – except where the Welsh Ministers are using their power of intervention to direct that school be closed under section 16. The regulated alterations are set out in Schedule 2. Subsection 5 of section 40 prohibits any alteration to a maintained school that changes its religious character or causes it to acquire or lose a religious character.

62. Similar provision was made in sections 28(11) and 33 of the 1998 Act.

Sections 41 – 44 and Schedule 2: Proposals that may be made in respect of schools in Wales

63. These sections give local authorities the power to make proposals to:

- Establish a community, voluntary, maintained nursery, community special school or a foundation special school;
- Discontinue a community, maintained nursery, voluntary, foundation, community special school or a foundation special school;
- Make a regulated alteration to a community, maintained nursery, community special or foundation special school;
- Make a regulated alteration to increase or reduce capacity at a voluntary or foundation school that does not have a religious character;

- With the consent of the Welsh Ministers, make a regulated alteration to open or close a school's sixth form at a voluntary or foundation school.

64. In addition, any person may make a proposal to establish a voluntary school and the governing body of a foundation, voluntary or foundation special school may make proposals to make a regulated alteration to the school or to discontinue the school.

65. Schedule 2 sets out in detail the regulated alterations that may be made to a school. Amongst other alterations it allows for:

- Alterations to the capacity of the school (paragraphs 10 to 14). In working out whether there is an alteration to the capacity of the school, previous alterations are taken into account so that changes to the capacity cannot be done incrementally without the need to make proposals;
- An increase or decrease in the age range of the school (paragraph 5). An increase in the upper age range of a school does not permit the addition of a school sixth form. Separate provision in the Schedule (at paragraph 6) allows for a sixth form to be added (or removed) from a school;
- Alterations to the language medium of the school (paragraphs 7 and 8). These have been updated from the Education (School Organisation Proposals) (Wales) Regulations 1999 to reflect the introduction of the foundation phase and teaching methodologies in primary schools; these no longer refer to subjects but instead to percentages of time spent teaching pupils.

66. Paragraph 26 of the Schedule provides the Welsh Ministers with a power to add, change or remove a regulated alteration by Order.

67. These provisions are based on sections 28, 29, 31 of the 1998 Act and regulations made under these powers.

Section 45 – 48 and Schedule 5: Changing a school's category

68. Schools maintained by local authorities (other than maintained nursery schools) are divided into the different categories set out in section 20 of the 1998 Act. Sections 45 to 48 (based on section 35 of, and Schedule 7 to the 1998 Act) detail who may make proposals to change a school's category; the grid below summarises this (VA means voluntary aided, VC means voluntary controlled, GB means governing body and LA means local authority).

Category of school	Can become	Proposer
Community school	VA or VC	GB
VA school	Community or VC	GB
VC	Community or VA	GB
Foundation	Community, VA or VC	GB
Community Special	Foundation Special	GB or LA

Foundation Special	Community Special	GB
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69. No school may change category to become a foundation school.

70. Schedule 3 to the 1998 Act sets out the expenses the governing body of a VA school is responsible for meeting. A VA school must make proposals to become VC if the GB of that school is unable or unwilling to carry out their funding obligations as set out in that Schedule 3 (section 46). In order to become a VA school a GB must satisfy the Welsh Ministers that they are able to satisfy those funding obligations for a period of at least five years after the change of category takes place (section 47).

71. A change of category does not authorise a change in a school's religious character, or authorise it to establish, join or leave a foundation body (as defined in section 21 of the 1998 Act).

72. If a school is to become a community or community special school, it must enter into the transfer agreements detailed in Schedule 5. This Schedule provides for and sets out the process by which governing bodies and local authorities must implement the proposals to change schools and makes similar provision to that found in the Change of Category of Maintained Schools (Wales) Regulations 2001. It sets out, amongst other things, details on how staff and land are to be transferred. The Welsh Ministers are provided with a regulation making power in connection with how changing category affects the government of the school.

Section 49 - Publication and consultation

73. This section requires that school organisation proposals are consulted upon and published. The Code will set out requirements for the consultation and how and when proposals are to be published. Proposers must publish a report on the consultation. The proposers must send copies of the published proposals to the Welsh Ministers and the maintaining local authority. The requirement to consult does not however apply in the case of proposals to discontinue schools with fewer than 10 registered pupils on the third Tuesday of the preceding January (as defined in section 57). This date is the date upon which the Annual Schools Census currently takes place (and the number of pupils at a school on that date will therefore be known).

Section 50- Objections

74. This section enables any person to object in writing to a proposal within 28 days of the publication date ("the objection period"), and requires proposers to publish a summary of the objections together with their responses within 28 days of the end of the objection period.

Sections 51- 55 and Schedule 3: Categories of objectors and approval

75. Any person may object to a proposal, but whether a person falls within one of the three categories of objectors (set out in section 51) will dictate who determines the proposal as detailed in the following table

<u>If there is/are –</u>	<u>Who determines the proposal</u>
At least one category 1 objector or the proposal relates to sixth form education	Welsh Ministers (section 52)
No category 1 objectors, at least one category 2 objector and/or at least ten category 3 objectors	Local Determination Panel (section 53)
No category 1 or 2 objectors , up to nine category 3 objectors, and / or objectors that don't fall into any of the categories, or there are no objections	The proposer (section 55)

76. Objections in relation to the closure of a school with fewer than 10 pupils are determined by the proposer regardless of category (section 52(9)).

77. Provision is also made for the provision of documents to the Welsh Ministers or local determination panel and how to deal with related proposals (section 54).

78. Section 53 and Schedule 3 provides a framework as to the membership, procedure and miscellaneous matters relating to a local determination panel. The local determination panel is to consist of 5 members who are to be treated as members of the appointing authority for the purposes of Part 8 of the Local Government (Wales) Measure 2011. This means that local determination panel members will be able to be paid allowances and expenses in accordance with the 2011 Measure.

79. The local determination panel will also be a body within the jurisdiction of the Public Services Ombudsman for Wales. This means that a complaint can be made to the Ombudsman about the local determination panel in the same way as a complaint could be made about an independent appeal panel for school admissions or exclusion.

Section 56 and Schedules 4 and 5 - Implementation

80. This section requires that proposals which have been approved, or the proposer has determined that they should be implemented, must be implemented in the form in which they were approved or determined, and in accordance with Schedule 5 for change of category proposals, or in accordance with Schedule 4 for every other type of proposal.

81. Schedule 4 provides further detail about the implementation of statutory proposal including responsibilities for implementing different types of proposals, and the provision of premises and assistance. Schedule 5 provides further detail about the implementation of change of category proposals, including the transfer of staff and land.

82. The proposer may delay determination for up to three years, or determine not to implement a proposal at all, if it is satisfied that implementation would be unreasonably difficult or that circumstances have so altered that implementation would be inappropriate. The proposer may also determine to bring forward implementation by up to 13 weeks.

83. In making such determinations, the proposer must notify the relevant governing body and local authority (where these are not the proposer).. Where proposals have received the approval of the Welsh Ministers or the local determination panel, the proposer must seek the agreement of the Welsh Ministers before making any determination to delay or abandon or bring forward implementation.

84. Section 56 and Schedule 4 replace, with amendments, Schedule 6 to the 1998 Act. Schedule 5 is based on the Change of Category of Maintained Schools Regulations 2001.

Chapter 3: Rationalisation of School Places

Sections 58 - 64: Rationalisation of Schools Places – powers and procedures

85. These sections set out powers of the Welsh Ministers to direct local authorities and governing bodies to exercise their powers under Chapter 2 of this Part to make proposals to increase or decrease the number of school places in their area so as to address insufficient or excessive provision - i.e. “rationalise school places”.

86. If the local authority fails to rationalise school places, the Welsh Ministers are provided with powers to make their own proposals to rationalise places (and these provisions also set out the procedure to be followed in the event that such proposals are published).

87. These sections largely re-enact Schedule 7 to the 1998 Act.

Chapter 4: Regional Provision for Special Educational Needs

Sections 65 – 71: Regional Provision of Special Educational Needs, powers and procedures

88. These sections set out the powers of the Welsh Ministers to direct local authorities to consider making regional provision for children with special educational needs, or to direct local authorities and governing bodies to make arrangements or proposals for regional provision. Regional provision may involve the provision of education at a school maintained by one local authority for children from other authorities, or the provision of goods and services by one local authority to other authorities or schools.

89. Section 71 provides for the Welsh Ministers to make their own proposals in respect of regional provision (including the procedure to be followed in the event that such proposals are published).

90. These sections are based on provisions found at sections 191 to 193 of the Education Act 2002.

Chapter 5: Proposals for Restructuring Sixth Form Education

Sections 72 – 78

91. These sections, based on section 113A of and Schedule 7A to the Learning and Skills Act 2000, provide the Welsh Ministers with the power to make proposals for the establishment of new community, community special or foundation special schools to provide sixth form education only; the addition or removal of sixth form education from any existing maintained schools; the discontinuation of any existing sixth form school; and the procedures to be followed if the Welsh Ministers publish proposals for restructuring sixth forms.

92. Section 78 makes consequential amendments in respect of inspection reports on sixth form education. Section 113 of, and Schedule 7 to the Learning and Skills Act 2000 provided the Welsh Ministers with powers to publish proposals to discontinue a school that only offered sixth form education or to remove a sixth form from a school. These powers were triggered by an adverse inspection report from by Her Majesty's Chief Inspector of Education and Training in Wales. As section 72 provides a free-standing power for the Welsh Ministers to bring forward proposals for the alteration or removal of sixth forms, there is no longer a need for the triggers in Schedule 7 to the Learning and Skills Act 2000. However the requirement to report separately on the adequacy of the education of a school's sixth form as part of a general school or an area inspection is still relevant, and the Education Act 2005 is amended to retain this requirement. These sections are based on provision found in paragraphs 1 to 6 of Schedule 7 to the Learning and Skills Act 2000.

Chapter 6: Miscellaneous and Supplemental

Section 79 - Federated schools

93. This section allows proposals to establish a new school to include the establishment of the school as a federated school. A federated school is a school which is part of a group of schools with a single governing body.

Section 80 - Prohibition on local authorities establishing schools in England

94. This section prevents the establishment of a school in England which would be maintained by a local authority in Wales. This section re-enacts section 69 of the Education Act 2005.

Section 81 - Notice by governing body to discontinue a foundation or voluntary school

95. This section, which re-enacts and updates section 30 of the 1998 Act, enables the governing body of a foundation or voluntary school, following the procedure

required by this section, to discontinue their school by serving at least two years' notice on the Welsh Ministers and local authority.

Section 82 - Direction requiring the discontinuance of community and foundation special schools

96. This section which re-enacts section 32 of the 1998 Act allows the Welsh Ministers to direct a local authority to discontinue (without the need for proposals under section 44) a community or foundation special school if they consider it expedient to do so in the interests of health, safety or welfare of pupils. Before doing so the Welsh Ministers are required to consult specified persons. The Welsh Ministers must also provide notice to the relevant governing body and headteacher.

Part 4: Welsh in education strategic plans

97. Part 4 makes it a statutory requirement for local authorities to have Welsh in education strategic plans (WESPs) in place. This replaces a voluntary scheme.

Section 85 – Preparation of Welsh in education strategic plans

98. This section sets out what a WESP should contain. This section places a duty on all local authorities to prepare a plan, keep it under review and revise it if necessary. This section also sets out with whom a local authority is required to consult in preparing or revising its WESP.

Section 86 - Approval, publication and implementation of Welsh in education strategic plans

99. Each local authority will be required to submit its WESP to Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a WESP (imposing its own plan in its place). Subsection (6) places a duty on a local authority to take all reasonable steps to implement its approved WESP.

Section 87 - Assessing demand for Welsh medium education

100. This section provides a power for the Welsh Ministers to make regulations which require local authorities to assess parental demand for Welsh-medium provision in certain circumstances. Such regulations may make provision about when and how a local authority should undertake an assessment of demand.

Section 88 - Regulations and guidance

101. This section gives Welsh Ministers powers to make regulations which will make further provisions on matters such as the form and content of a WESP, its timing and duration, keeping the WESP under review, consultation and submission of the WESP for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

102. This section also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions under Part 4.

Part 5: Miscellaneous Schools Functions

Section 89 – Duty to provide free breakfasts for pupils in primary schools

103. This section requires a local authority to provide breakfasts free of charge on each school day for pupils at a primary school it maintains if the governing body of the school has made a written request to the local authority for breakfasts to be provided and 90 days have passed since the authority received the request.

104. The local authority's duty to provide breakfasts will not apply if the governing body has asked the local authority to stop providing breakfasts, or the local authority decides that it would be unreasonable to provide, or continue to provide, breakfasts at the school.

105. The section sets out the requirements that must be met by a local authority when making breakfast arrangements. It also provides the Welsh Ministers with a power to issue guidance to which local authorities and governing bodies must have regard.

Section 90 – Transitional Provisions

106. Subsection (1) applies where a local authority that maintains a primary school, or its governing body, is providing breakfasts to pupils at the time the local authority's duty under section 89 comes into force. In such circumstances, the local authority's duty under section 89 will apply in relation to the school as if the requirements in section 89(1) have been met.

107. Subsections (2) and (3) apply if, before the local authority's duty under section 89 comes into force, the governing body of a maintained primary school makes a written request to the local authority to provide breakfasts at the school and neither the local authority or the governing body of the school has arranged for breakfasts to be provided to pupils at the school. In such circumstances the request made by a governing body is to be treated as though it was made on the day that the local authority's duty under section 89 came into force.

Section 92 – Amendment to power to charge for school meals etc

108. This section amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of the 1996 Act.

109. Subsections (2)(b) and (3)(b) repeal the requirement that any charge made for the provision of milk, meals and other refreshments in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will give local authorities and governing bodies the option to charge different prices for the same quantity of the same item.

110. Flexible charging will for example, enable local authorities and governing bodies to charge less for school meals provided to children of families on low incomes not eligible for free school meals in order to encourage them to take school meals. Use of flexible charging is optional and subject to local circumstances. This change will not affect the provision of free school meals (and free milk) to eligible pupils.

111. The effect of the amendments made by subsections 2(a) and 3(a) is that local authorities and governing bodies of maintained schools are prevented from charging more than the cost of providing milk, meals or other refreshments to pupils. Currently, there is no cap on how much a pupil can be charged. This will not affect the provision of free school meals (and free milk) to eligible pupils

Section 93 – Independent counselling services for school pupils and other children

112. This section requires a local authority to make reasonable provision for an independent counselling service in respect of health, emotional and social needs for specified categories of persons.

113. The section sets out requirements that must be met by a local authority when making counselling arrangements.

114. It also provides the Welsh Ministers with a power to make regulations requiring local authorities to provide counselling services at locations specified in the regulations.

Section 94 – Information about independent counselling services

115. This section enables the Welsh Ministers to obtain information from a local authority about its independent counselling service. Subsections (1) and (2) require a local authority to comply with a direction of the Welsh Ministers by providing and compiling information about the counselling service. Subsection (3) prevents the disclosure of an individual's identity and subsection (4) sets out the position where the person providing the counselling service is not the local authority.

Section 95 – Duty of governing body of maintained schools to hold meetings following petition by parent

116. This section provides out that a governing body must hold a meeting if the following four conditions are met:-

1. it receives a petition requesting a meeting from:
 - the parents of 10% of registered pupils, or;
 - the parents of 10 registered pupils in the case of a primary school, or;
 - the parents of 30 registered pupils in the case of a secondary school;
2. the meeting is for the purpose of discussing a matter relating to the school;
3. that there will be no more than three such meetings in a school year; and

4. that there are enough school days left in the school year in which to hold the meeting.

117. Upon receipt of a request the governing body must inform parents of registered pupils at the school of the date and purpose of the meeting and must hold the meeting within 20 days (as calculated in accordance with subsection (9) and (10)) of receipt of the petition.

118. The governing body must have regard to guidance issued by the Welsh Ministers on how to discharge their duty in this section.

Section 96 – Repeal of duty to hold annual parents’ meeting

119. As a consequence of the provision on parents’ meetings in section 95, this section repeals section 33 of the Education Act 2002 which required governing bodies of maintained schools to hold an annual parents’ meeting (and consequently the Annual Parents’ Meeting (Exemption) (Wales) Regulations 2005 made under that power will lapse).

PART 6

General

Section 98 – Orders and Regulations

120. This section sets out the regulations and orders under the Bill to be made by statutory instrument and sets out the National Assembly for Wales procedure in respect of these instruments.

Section 99 – General interpretation and index of defined expressions

121. Section 99 defines terms used in the Bill and also contains an index of terms that are defined for the purpose of some provisions of the Bill. Subsection (1) provides that the Bill is to be read as one with the Education Act 1996. This means that general provisions and general definitions in that Act will also apply to this Bill. For example the definition of the “education functions” of a local authority in the Education Act 1996 refers to the functions set out in Schedule 36A to that Act. That term, when used in this Bill, has the same meaning. If there is a difference in meaning between a term used in this Bill and in the Education Act 1996, the meaning given for the purpose of the Bill applies.

Section 100 and Schedule 6 – Minor and consequential amendments

122. Section 100 gives effect to Schedule 6, which contains minor and consequential amendments as a result of the provisions in Parts 2, 3 and 5.

123. Amongst other things it amends the Diocesan Board of Education Measure 1991. This is a Church of England Measure. Whilst almost all of Wales is within the boundaries of the Church in Wales, there are some parishes in Powys that form part of dioceses within the Church of England.

124. Amendments to the Church of England Measure could have been made by this Act, the Secretary of State for Wales under section 150 of the Government of Wales Act 2006, by a UK Act of Parliament or by a Church of England Measure. The Welsh Government sought the views of the Church of England on this matter and obtained the agreement of the Secretary General to the Archbishops' Council to the amendments to be made by this Act.

Section 101 – Commencement

125. This section provides for sections 1 (overview), 101 (commencement) and 102 (short title and inclusion as one of the Education Acts) to come into force the day after Royal Assent is received.

126. Chapter 3 (school improvement guidance) of Part 2, section 92 (amendment to power to charge for school meals etc) and paragraphs 26, 29(1), 30 and 31 of Part 3 of Schedule 6 (amendments consequential on section 92) (and section 100 in relation to those paragraphs) come into force 2 months after Royal Assent is received.

127. The remainder of the Bill will come into force in accordance with commencement orders made by the Welsh Ministers.

Section 102 – Short title and inclusion as one of the Education Acts

128. This section provides that the short title will be the School Standards and Organisation (Wales) Act 2013. It also provides that the Bill is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This means that references in any legislation to “the Education Acts” will include this Bill.

This document has been prepared by National Assembly for Wales lawyers in order to provide Assembly Members and their staff with information and advice in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no liability is accepted for any reliance placed on them by third parties.

Constitutional and Legislative Affairs Committee

The School Standards and Organisation (Wales) Bill

Legal Briefing – Powers to make Subordinate legislation

1. Introduction and overview of the Bill

This paper sets out what powers are contained in the School Standards and Organisation (Wales) Bill (“the Bill”) for Welsh Ministers to make subordinate legislation.

The Bill sets out to do the following:

- reform the powers of local authorities and the Welsh Ministers to intervene in the conduct of schools maintained by local authorities that are causing concern;
- to reform the powers of the Welsh Ministers to intervene in the exercise of education functions by local authorities;
- to provide for school improvement guidance;
- to reform the statutory arrangements for the organisation of maintained schools;
- to provide for Welsh in education strategic plans;
- to make miscellaneous provisions in relation to maintained schools including provisions on free school breakfasts, flexible charging for school meals, school-based counselling, parents’ meeting and a code of practice on relations between local authorities and maintained schools.

2. Powers to make subordinate legislation

The Bill contains several powers for subordinate legislation to be made by Welsh Ministers. These are explained in Part 1.5 of the Explanatory Memorandum laid with the Proposed Bill and in the Explanatory Notes that appear at the end of that Memorandum.

Standing Order 26.6 (vii) states that when any Bill is introduced, the responsible Member must lay an explanatory Memorandum which must among other matters contain the following:

(vii) where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:

- (a) The person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;*
- (b) Why it is considered appropriate to delegate the power; and*
- (c) The Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure).*

Section 98 of the Bill sets out the regulations and orders under the Bill to be made by statutory instrument and sets out the National Assembly for Wales (“the Assembly”) procedure in respect of those instruments. It also lists some powers that allow Orders to be made that are not to be exercised by statutory instrument.

The Bill gives the following powers to make subordinate legislation:-

(i) School Organisation – The Code on School Organisation (“the Code”) (Section 39)

Section 38 provides that the Welsh Ministers must issue, and revise from time to time, a code on school organisation. The Code will contain provisions about the exercise of functions of the Welsh Ministers, local authorities, governing bodies of maintained schools, local determination panels and other persons in connection with proposals made. The Code may impose requirements, and may include guidelines setting out aims and objectives and other matters. It is intended that 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. The fact that the proposed Code may impose requirements makes it clear that it is proposed to be legislative in nature, rather than purely administrative.

Section 39 sets out the procedure for Welsh Ministers to issue a Statutory Code on school organisation. Provisions inserted in the code will be based on best practice and a code will allow those principles and best practice to be incorporated over time.

Procedure: The Code will be subject to the procedure laid out in the Bill. The Welsh Ministers must consult such persons as they think fit on the draft of the Code (or revised Code). A draft copy of the code must be laid at the Assembly. If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the code, the Welsh Ministers must not issue the proposed code in the form of the draft. If no such resolution is made before the end of the 40 day period then the Welsh Ministers must issue the code. The code or revised code will come into force on a date appointed by order of the Welsh Ministers. The procedure mirrors that in laying the codes on School Admissions and School Admission Appeals. In effect, the

procedure also mirrors that of the “negative procedure”, though the assembly veto is exercisable before the Code is made rather than afterwards as is usually the case with Statutory Instruments.

(ii) School Organisation Proposals – Establishment, alteration and discontinuance of maintained schools (Section 57(3))

Chapter 2 of Part 2 of the Bill makes detailed provisions for the establishment, alteration and discontinuance of schools and in doing so gives various powers to local authorities, the Welsh Ministers and governing bodies of schools.

Section 57 is an interpretation section and subsection (1) lists a number of definitions contained in Chapter 2. “Small school” is defined as a school with fewer than 10 registered pupils on the third Tuesday in the January immediately preceding the date on which the proposals are made. This date is currently the annual school census date. Section 57(3) allows Welsh Ministers by Order to change the date in the Bill should this be necessary.

Procedure: Section 98(4) states that an order made under section 57(3) will be subject to the negative resolution procedure.

(iii) Assessing demand for Welsh medium education (Section 87)

Section 87(1) provides a power exercisable by regulations for the Welsh Ministers to “require a local authority, in accordance with regulations, to carry out an assessment of the demand among parents in its area for Welsh medium education for their children. Section 87(2) may (among other things) make provision about when and how to make an assessment.

Procedure: Any such regulations will be subject to the negative resolution procedure (section 98(4)).

(iv) Assessing demand for Welsh education – Regulations and Guidance (Section 88)

Section 88(1) gives power to Welsh Ministers to make regulations about Welsh in education strategic plans. Section 88(2) allows the regulations to specify the form and content of a plan (88(2)(a)); the timing and duration of a plan (88(2)(b)); keeping a plan under review and its revision (88(2)(c)); consultation during the preparation and revision of a plan (88(2)(d)); the submission of a plan for approval

(88(2)(e)); and when and how to publish a plan (88(2)(f)). Section 88(3) provides that Welsh Ministers may also make regulations enabling local authorities to prepare and submit a joint plan to allow for collaborative working between local authorities.

Procedure: Any such regulations will be subject to the negative resolution procedure (section 98(4)).

(v) Independent counselling services for school pupils and other children (Section 93)

Section 93 provides that a local authority must secure reasonable provision for a service providing counselling in respect of health, emotional and social needs for school pupils and other specific groups. The explanatory memorandum states that school-based counselling is currently being piloted in primary schools and that these regulation making powers will allow Welsh Ministers to respond to any future evidence based need. Subsection (5) also will allow Welsh Ministers to make regulations requiring “the provision of an independent counselling service at other locations other than in the schools”.

Procedure: Any such regulations will be subject to the negative procedure (section 98(4)).

(vi) Schedule 1 – Establishment of normally constituted governing body (Schedule 1 Paragraph 17(2))

Schedule 1 Paragraph 17(2) provides Welsh Ministers with regulation making powers to make provision with respect to the transition from an interim executive board to a normally constituted governing body. The explanatory memorandum states that the purpose of such regulations will be to 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 school.

Procedure: Any such regulations will be subject to the negative procedure (section 98(4)).

(vii) Schedule 2 – Regulated alterations (Schedule 2 Paragraph 26)

Paragraph 26 of Schedule 2 will allow Welsh Ministers by order to add, delete or amend specified alterations of schools. This is a fairly significant power as it will allow Welsh Ministers to amend the Bill itself in this context, therefore avoiding the need for new primary legislation.

Procedure: Any such orders will be subject to an affirmative resolution procedure.

(viii) Schedule 5 – Implementation of proposals to change category of school (Schedule 5 paragraph 40)

Schedule 5 provides procedures for when a school changes category in accordance with proposals. Paragraph 40 gives regulation making powers to the Welsh Ministers in connection with the implementation of proposals to change a school's category in respect of the government of a school.

Procedure: Any such regulations will be subject to the negative procedure (section 98(4)).

(ix) Commencement Provisions

This section provides for sections 1 (overview), 101 (commencement) and 102 (short title and inclusion as one of the Education Acts) to come into force the day after Royal Assent is received. Chapter 3 (school improvement guidance) of Part 2, section 92 (amendment to power to charge for school meals etc.) and paragraphs 26, 29(1), 30 and 31 of Part 3 of Schedule 6 (amendments consequential on section 92) (and section 100 in relation to those paragraphs) come into force two months after Royal Assent is received.

Section 101(3) gives the power to Welsh Ministers to make commencement orders to bring the remaining parts of the Bill into force when needed.

Procedure: There is no scrutiny procedure provided for the commencement orders and this is normal legislative practice.

3. Delegated Powers not to be exercised by statutory instrument

In this Bill some provisions give Welsh Ministers the power to make orders that are not to be exercised by statutory instrument and therefore not subject to any Assembly scrutiny procedure.

(i) Rationalisation of School Places – Directions to make proposals for rationalisation of school places

Section 58 makes provisions for instances where the Welsh Ministers believe that there is excessive or insufficient provision for primary or secondary education in maintained schools in the area of a local authority or in a part of such an area. Section 58(2) provides that the Welsh Ministers may, by order “(a) direct the local authority to exercise its powers to make proposals to establish, alter or discontinue schools, and (b) direct the governing body of a foundation, voluntary or foundation special school maintained by the authority to exercise its powers to make proposals to alter its school.” Such an order must then require the proposals to be published no later than a specified date in the order, that the proposals apply any principles specified in the order, and that where the Welsh Ministers are of the opinion that there is or there is likely to be insufficient provision, to specify the additional number of pupils to be accommodated.

Procedure: Section 98(2) states that an order made under section 58(2) will not be made by statutory instrument. Any order will therefore not be subjected to any Assembly scrutiny procedure.

(ii) Regional Provision for Special Educational Needs (Section 67(2))

This chapter makes provision for the possibility of two or more local authorities to provide special education functions on a regional basis if it is considered that that would be more effective or efficient if in relation to the areas of those authorities.

Section 65 provides definitions of what is considered “regional provision” and “special education functions.” Section 66 provides that the “Welsh Ministers may direct local authorities to consider whether they would be able to carry out their special education functions, in respect of children with the special educational needs specified in the direction, more efficiently or effectively if regional provision were made. Subsection (2) states the “authorities to whom a direction is given must report their conclusions to the Welsh Ministers no later than the time specified in the direction.”

Section 67 (2) gives order making powers to the Welsh Ministers for the purpose of securing that regional provision is made in relation to the description of children from the areas specified.

Procedure: Similarly to section 57(2), section 98(2) states that an order made under section 67(2) will not be made by statutory instrument. Any order will therefore not be subject to any Assembly scrutiny procedure.

(iii) Schedule 5, Part 3, Paragraph 34 – Transfer of Land

Paragraph 34 gives the Welsh Ministers power to make an order in relation to the transfer of land in certain circumstances that excludes certain provisions and requirements that would normally apply for other transfers of land under the Bill.

Procedure: Section 98(2) states that an order made under paragraph 34(1) (b) will not be exercised by statutory instrument and therefore will not be subject to any further Assembly scrutiny procedure. This is comparable to a compulsory purchase order that would not be subject to an Assembly procedure.

4. Powers of Direction

For the sake of completeness, the Bill, as highlighted by the Minister's letter dated 16th May 2012, contains several others powers of direction for Welsh Ministers that are laid out on the face of the Bill. These powers will be scrutinised and considered by the Children and Young People Committee when they consider the general principles of the Bill at stage 1 of the legislative process.

In summary, there are powers of direction in sections 12, 15, 16 and 17 relating to intervention in a School Governing Body by the Welsh Ministers. This includes the power to require governing bodies to collaborate and secure advice from specified third parties, to direct the federation of schools, to direct the closure of a school and an over-arching power to give directions generally and to take necessary steps.

Sections 24, 25, 26, 27 and 28 contain powers of direction in relation to intervention in a local authority by the Welsh Ministers. These powers of direction include the power to request local authorities to obtain advisory services; to require performance of functions by other persons on behalf of an authority; to require performance of functions, to which a ground of intervention relate, to be exercised by Welsh Ministers or their nominee; the power to direct exercise of other education functions; and an over-arching power to give directions generally and to take necessary steps.

Section 82 allows Welsh Ministers to direct a local authority to discontinue a community or foundation special school maintained by it on a specified date, if they consider it expedient to do so in the interests of the health, safety or welfare of pupils at the school.

Finally, section 94 provides Welsh Ministers with the power to direct local authorities to provide information regarding their independent counselling services.

5. Powers to issue Statutory Guidance

The Bill also contains several powers for the Welsh Ministers to issue statutory guidance on a range of subjects.

Section 20 gives the Welsh Ministers a power to issue statutory guidance to local authorities in relation to how they exercise their powers of intervention. The power to issue statutory guidance under this section is not made subject to any further Assembly scrutiny.

Section 33 gives the power to Welsh Ministers to issue school improvement guidance. Before issuing such guidance it is subject to an Assembly scrutiny procedure as laid out in section 34 of the Bill. This procedure is similar to the negative procedure. By virtue of section 35, the school authority must follow the guidance unless it sets out a policy statement listing how it intends to exercise duties differently and the reasons why it is seeking to exercise functions differently. This gives it the legislative character that justifies the application of an Assembly procedure. Despite this caveat, the Welsh Ministers retain a power to direct a school authority to take action to comply with the statutory school improvement guidance (section 37).

Section 89(5) of the Bill gives Welsh Ministers a power to issue statutory guidance regarding free breakfasts in primary schools.

Section 93(2)(b) gives the Welsh Ministers the power to issue guidance regarding School Based Counselling.

6. Conclusion

For the majority of delegated powers in the Bill there do not appear to be any unusual provisions. However, the powers listed above in part 3

of this paper lists three order making powers that will in accordance with section 98(2) of the Bill, not be made by statutory instrument.

The Committee may like to consider whether some or all of these Order making powers should be made by statutory instrument and subject to further scrutiny, or whether they are satisfied that these powers are used in the manner already prescribed.

Legal Services
May 2012

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Leighton Andrews AM
Minister for Education and Skills
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

1 May 2012

Dear Leighton,

School Standards and Organisation (Wales) Bill - Invitation to give evidence to the Constitutional and Legislative Affairs Committee

The Constitutional and Legislative Affairs Committee considered the School Standards and Organisation (Wales) Bill at its meeting on 30 April 2012 and agreed to invite you to attend the Committee to provide further information on the Bill.

I would be grateful if you could give evidence at the Committee's meeting on Monday 28 May 2012 at 3:30pm.

The Committee would be grateful if you could provide a background paper on the Bill in advance of the meeting to help the Committee's consideration. It would be helpful if the paper could address the following points in particular:

1. What impact you consider the Bill will have?
2. What powers are contained in the Bill allowing Welsh Ministers to make subordinate legislation?
3. Why those matters are being dealt with by enabling powers rather than on the face of the Bill?
4. Why the affirmative or negative resolution been chosen to exercise the powers in each case and whether any of the powers are exercisable in other ways, for example by the so called "super affirmative" procedure?
5. Are there any powers that are exercisable other than by Statutory Instrument or without any specific Assembly procedure?

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
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Ffôn / Tel: 029 2089 8154
E-bost / Email: olga.lewis@wales.gov.uk

6. How will the powers contained in the proposed Bill change the powers currently held by Ministers?
7. How does the Government intend to implement these powers?

I should be grateful for a response on these issues by 14 May 2012.

I would be grateful if your officials could liaise with the Deputy Clerk of the Committee Olga Lewis (tel: 02920 898154) with regards to the practical arrangements.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Melding AM
Chair



David Melding AM
Chair
Constitutional and Legislative
Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

16 May 2012

Dear David,

School Standards and Organisation (Wales) Bill - Invitation to give evidence to the Constitutional and Legislative Affairs Committee

I am writing in response to your letter inviting me to give evidence to the Committee on 28 May 2012.

I am pleased to accept your invitation and look forward to the opportunity to discuss the powers contained within the proposed **School Standards and Organisation (Wales) Bill**.

I would like to provide the following information to assist the committee prior to our meeting as requested.

1. What impact do you consider the Bill will have?

The School Standards and Organisation (Wales) Bill (the Bill) includes provision for intervening in schools causing concern, intervention in local authorities, school improvement, school organisation, Welsh in Education strategic plans, parents' meetings, school-based counselling, primary school free breakfasts and flexible charging for school meals.

I consider that the proposals in the Bill will sharpen the accountability of schools and local authorities by bringing together, updating and tightening standards and management.

Chapter 3 of the Explanatory Memorandum sets out the purpose and intended effect of the School Standards and Organisation (Wales) Bill . I draw your particular attention to -

- Paragraphs 3.10 to 3.27, 7.1 to 7.8 and 8.2 to 8.14 with regard to Intervention in schools and local authorities provisions.
- Paragraphs 3.28 to 3.39, 7.9 to 7.19, and 8.15 to 8.32 with regard to the School Improvement Guidance provisions.

- Paragraphs 3.54 to 3.58, together with paragraphs 7.35 to 7.37 and 8.54 to 8.64 with regard to School Organisation.
- Paragraphs 3.61 to 3.80, 7.38 to 7.51 and 8.65 to 8.82 with regard to Welsh in Education Strategic Plans provisions.
- Paragraphs 3.108, 7.73 to 7.75 and 8.129 to 8.134 with regard to Free Breakfasts in Primary Schools.
- Paragraphs 3.113 to 3.116, 7.91 to 7.92 and 8.143 to 8.147 with regard to the powers to charge for school meals.
- Paragraphs 3.103 to 3.106, 7.63 and 8.111 to 8.114 with regard to school based counselling.
- Paragraphs 3.81 to 3.95, and 7.52 to 7.60 with regard to Parents' meetings.

2. What powers are contained in the Bill allowing Welsh Ministers to make subordinate legislation?

These are detailed in Part 5 of the Explanatory Memorandum, and the relevant information is reproduced at Annex 1 to this letter.

3. Why those matters are being dealt with by enabling powers rather than on the face of the Bill?

Annex 1 provides further information on this matter, but in summary –

- the proposed regulations relating to intervention in the conduct of a maintained school will be fairly technical in nature, making provision for the detail relating to the transition of a school's governing body from an interim executive board to a normally constituted governing body. This includes the technical detail of the arrangements for the composition, establishment and conduct of a governing body. Setting this out in secondary legislation will allow the details to change as circumstances change. This was also a regulation making power in the School Standards and Framework Act 1998 and that power is merely brought into the Bill.
- setting out consultation and other requirements in a school organisation code rather than on the face of the Bill will enable the use of language more easily understood by interested parties. Furthermore, provisions in the code will be based on best practice and may be developed over time. The format of a code, which can include guidance as well as impose requirements, should enable developments in best practice to be more easily incorporated.
- the regulated alterations to schools contained in Schedule 2 are liable to change over time as policy develops. An order making power (as set out at Paragraph 26 of schedule 2) would enable the Act to be amended without the need for new primary legislation.

- regulations made under Paragraph 40 of Schedule 5 would be wholly technical in nature and relate to an element of the current change of category regulations.
- in relation to WESPs the key duties are set out on the face of the Bill; the regulations will set out the technical detail flowing from those key duties. This detail will need to be reviewed and amended on a regular basis based on experience, and so it would not be appropriate to set all of that detail out in the Bill. Setting the detail out in regulations will provide the flexibility needed to make the changes based on experience and in a timely manner. The detail regarding all these matters to be included in regulations is technical and it is not anticipated that it will be controversial.
- in relation to school-based counselling it is appropriate that the Welsh Ministers have the means to respond to future evidence based needs. The Welsh Government is currently considering the outcome of its recent pilot about school-based counselling in primary school, and ways in which it might support local authorities to extend counselling services to years 5 and below in the primary sector. The Welsh Government is aware of the recommendation made by the British Association of Counsellors and Psychotherapists, in its evaluation report published in October 2011, that the Welsh Government considers rolling out its counselling strategy to the primary school sector using an age appropriate format.

4. Why the affirmative or negative resolution been chosen to exercise the powers in each case and whether any of the powers are exercisable in other ways, for example by the so called “super affirmative” procedure?

The nature of the procedure to be applied to the powers in each case is set out in the table at Annex 1.

I confirm that no powers are exercisable by way of the so-called ‘super-affirmative procedure’.

5. Are there any powers that are exercisable other than by Statutory Instrument or without any specific Assembly procedure?

Clarification note: Question relates to any powers exercisable by the Welsh Ministers. Specifically, the powers in Section 58(2), 67(3) and in para 341(1)(b) of Schedule 5.

There are powers of direction in sections 12, 15, 16, 17 relating to intervention in a school Governing Body by the Welsh Ministers.

Sections 24, 25, 26, 27 and 28 also contain powers of direction, but in relation to intervention in a local authority by the Welsh Ministers.

Section 20 also gives the Welsh Ministers a power to issue statutory guidance to local authorities in relation to how they exercise their powers of intervention.

Chapter 3 in Part 2 contains a power for the Welsh Ministers to issue statutory guidance to school authorities in relation to improving educational standards at schools

Section 37 in Chapter 3 of Part 2 gives the Welsh Ministers a power to direct a school authority to take action to comply with the statutory school improvement guidance.

Sections 52 and 54, and Paragraph 34(1) of Schedule 5 provide the Welsh Ministers with powers regarding school organisation and staffing.

Sections 58, 60 and 63 provide the Welsh Ministers with powers regarding the rationalisation of school places.

Sections 66, 67, 69 and 71 set out powers of the Welsh Ministers regarding regional provision for children with special educational needs.

Sections 72 and 74 provide the Welsh Ministers with powers in relation to sixth form education.

Section 82 provides the Welsh Ministers with the power of directing a local authority to discontinue a community or foundation special school.

Section 89(5) will enable Welsh Ministers to issue guidance regarding free breakfasts in primary schools.

Section 93 (2)(b) gives the Welsh Ministers the power to issue guidance regarding School Based counselling.

Section 94 provides the Welsh Ministers with the power to direct local authorities to provide information regarding their independent counselling services.

6. How will the powers contained in the proposed Bill change the powers currently held by Ministers?

The table set out in Annex 2 to this letter sets out the key changes to the Welsh Ministers' current powers.

7. How does the Government intend to implement these powers?

Clarification note: In particular the planned extent of consultation on Ministers' subordinate legislation powers in the Bill and broadly when it is envisaged powers will be commenced and used.

The provisions relating to intervention in the conduct of a maintained school will be commenced by way of commencement order. I consider it appropriate that the guidance should be issued at the same time as the main provisions are commenced. Work on the guidance is on going and will be subject to appropriate consultation. In light of that we anticipate that the provisions will be commenced in the latter half of 2013 to coincide with the issuing of the guidance.

The Bill provides that the school improvement guidance provisions in Chapter 3 of Part 2 of the Bill will be commenced 2 months after Royal Assent.

Work is already underway to develop a body of case studies, materials and resources on the latest evidence and research about effective practice and establish a methodology for collecting and disseminating best practice. The High Quality Teaching Resources will be published online and will be launched on Learning Wales in September 2012. Once this work is complete, we will consider the areas where evidence shows that statutory improvement guidance might be most effective and determine the timetable for its introduction.

In terms of Part 3 of the Bill, the school organisation provisions will be brought into force by commencement order so that the new regime on school organisation will be ready for September 2013. The code would be subject to consultation prior to its being laid, as

required in section 39 of the Bill. The Welsh Government will provide awareness sessions for local authorities and others who will be responsible for complying with the code.

Any change made by order under section 57 would be very small in nature and effect, and for that reason prior consultation would not be considered necessary. It is not anticipated that this power would need to be used in the near future.

Before making an order under paragraph 26 of Schedule 2, the Welsh Ministers would conduct appropriate consultation with the relevant stakeholders. However, no such order is planned for the foreseeable future.

Regulations made under paragraph 40 of Schedule 5 are expected to be brought into force shortly after the Bill is passed and would coincide with the commencement of the other relevant Bill provisions. The content of these regulations would be technical and their effect very minor. Therefore no prior consultation with stakeholders is considered necessary.

It is anticipated that the provisions for WESPs will commence in September 2013. The first statutory Plans will be submitted to the Welsh Ministers for approval by 20 December 2013 and will become operational from 1 April 2014. A consultation will be conducted on the draft regulations and they will come into force at the same time as the Bill provisions.

The provisions relating to free breakfasts in primary schools will be brought into force by way of a commencement order. We propose to commence the provisions in April 2013. Guidance will be developed to which local authorities and schools must have regard. The guidance would build on the current guidance circular no. 021/2008 document 'Primary School Free Breakfast Initiative' which currently forms part of the terms and conditions for operating the specific grant scheme. Local authorities and schools will be consulted on the draft guidance.

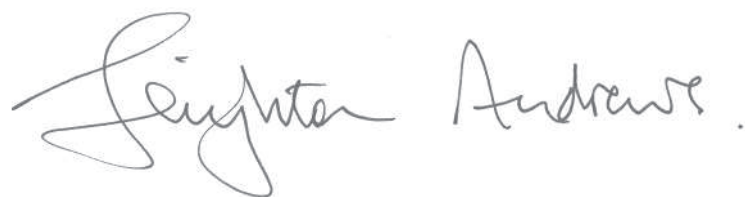
The provisions relating to the power to charge for school meals will come into force two months after the Bill receives Royal Assent. Guidance will be developed to assist local authorities and schools use flexible charging. Local authorities and schools will be consulted on the draft guidance.

The provisions relating to school-based counselling will be brought into force by way of a commencement order. We propose to commence the provisions in April 2013. There is no current timetable for making regulations under section 93(1)(d) and (5) as the Welsh Government is considering the outcome of the recent pilots in primary schools. We would consult with key stakeholders before introducing regulations in these areas.

The parents meeting provisions are all contained on the face of the Bill – they will commence 2 months after the Bill receives Royal Assent.

I trust that the committee finds this paper helpful and look forward to discussing this further on 28 May.

Yours sincerely

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a large initial 'L' and a period at the end.

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

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.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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.

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
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..

Section :	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			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

<p>Power of intervention in Bill</p> <p>Power to direct a school governing body to collaborate using the powers in Part 1 of the Education (Wales) Measure 2011.</p> <p>Appoint additional governors</p>	<p>Change to power made by the Bill</p> <p>This is a new power. This is appropriate as collaboration with a successful school may help turn around a failing school.</p> <p>Voluntary Aided schools no longer appoint extra governors to preserve a majority of foundation governors</p> <p>This is appropriate as if the school has failed it is important that the new additional governors are simply the best for the job.</p>
<p>Appoint interim executive members</p>	<p>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.</p>
<p>Directions to governing body or head teacher when acting unreasonably or failing to exercise an education function at all.</p>	<p>This is a minor technical change.</p> <p>Application of this direction power to head teachers is new. Previously directions could only be made to the governing body or the local authority.</p> <p>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.</p> <p>This recognises the role head teachers have in turning around a failing school.</p>
<p>School Improvement</p>	<p>Change to power made by the Bill</p>
<p>A power to issue statutory guidance.</p>	<p>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</p>
<p>School Organisation</p>	<p>Change to power made by the Bill</p>
<p>A power to issue a code on</p>	<p>The Welsh Ministers currently have no power</p>

<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>

	<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.</p>
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WESPs	Change to power made by the Bill
<p>A power to require local authorities to plan for Welsh education in its area</p>	<p>Ministers currently hold no powers relating to the preparation, submission and implementation of Welsh in Education Strategic Plans.</p>

Miscellaneous Schools Functions

	Change to power made by the Bill
<p>Free Breakfasts in Primary Schools</p>	<p>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</p>
<p>A power to charge for School Meals</p>	<p>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.</p>
<p>School-based counselling</p>	<p>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>

	<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>



Constitutional and Legislative Affairs Committee

Report: CLA(4)-11-12 : 21 May 2012

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA144 – The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 5 May 2012.

Date laid: 9 May 2012.

Coming in to force date: 1 June 2012

Affirmative Resolution Instruments

CLA142 – The Mental Health (Secondary Mental Health Services) (Wales) Order 2012

Procedure: Affirmative.

Date made: 2012

Date laid: Not stated

Coming into force date: 6 June 2012

CLA143 – The Mink Keeping (Prohibition) (Wales) Order 2012

Procedure: Affirmative.

Date made: 8 May 2012.

Date laid: 8 May 2012.

Coming into force date: 1 June 2012

Other Business

Committee Correspondence

CLA124 – The Controlled Waste (England and Wales) Regulations 2012

The Members noted the response of the Minister for Environment and Sustainable Development to the Chair's letter dated 26 April 2012 regarding the merits points of the CLA124 – The Controlled Waste (England and Wales) Regulations 2012.

Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction

The Committee took oral evidence from Emyr Lewis of Morgan Cole Solicitors and Senior Fellow in Welsh Law at the Wales Governance Centre and Professor Dan Wincott, Blackwell Professor of Law and Society at Cardiff Law School and Co-Chair of the Wales Governance Centre, Cardiff University. Professor Dan Wincott agreed to provide the Committee with the information on the percentage of the students in Cardiff University studying the Welsh legal dimension at undergraduate and graduate levels.

Resolution to Meet in Private

In accordance with Standing Orders 17.42(vi) and (ix) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction and the Welsh Government's Response to the Committee's Inquiry into Powers granted to Welsh Ministers in UK Laws.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA142

Constitutional and Legislative Affairs Committee Report

**Title: The Mental Health (Secondary Mental Health Services)
(Wales) Order 2012**

Procedure: Affirmative

This Order provides that, for the purposes of Parts 2 and 3 of the Mental Health (Wales) Measure 2010, local primary mental health support services made available in a particular local authority areas are not to be regarded as secondary mental health services in that local authority area.

The order further provides that services in England, Scotland or Northern Ireland which are the equivalent of secondary mental health services provided in Wales are to be regarded as secondary mental health services for certain purposes in Part 3 of the Measure.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Under Standing Order 21.3.(ii) the committee is invited to consider whether the Assembly should pay special attention to this instrument as it gives rise to issues of public policy likely to be of interest to the Assembly.

- Part 2 of the Measure contains requirements in respect of care co-ordination and care and treatment planning. Part 3 of the Measure enables eligible adults who have been discharged from secondary mental health services to refer themselves back to secondary services directly if they believe their mental health is deteriorating.
- Article 3 of the Order has the effect of excluding any service or treatment identified and made available as part of a local primary mental health service in a local authority area under Part 1 of the Measure from the requirements of Parts 2 and 3 of the Measure.

- Consequently service providers (LHBs and local authorities) will not be required to appoint care co-ordinators or provide care and treatment plans for individuals accessing services or treatment which are regarded as local primary mental health support services within a local authority area. A further consequence is that a person who has been discharged from services delivered as part of local primary health support service will not be entitled to seek reassessment.
- The Order extends the entitlement of those eligible to receive an assessment under Part 3 of the Measure to persons who have received secondary mental health services (equivalent to those provided in Wales) in England, Scotland or Northern Ireland.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA143

Constitutional and Legislative Affairs Committee Report

Title: The Mink Keeping (Prohibition) (Wales) Order 2012

This Order, in exercise of the power granted by section 10 of the Destructive Imported Animals Act 1932, prohibits the keeping of mink in Wales.

Procedure: Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument at this stage.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument at this stage:-

- the previous Order, prohibiting the keeping of Minks, lapsed in 2004 due to an administrative oversight. The prohibition that this Order seeks to introduce has not, therefore, been in force for around 8 years;
- the Welsh Government has not received any applications to keep mink in the last five years and they do not anticipate the introduction of this Order affecting any groups in Wales;
- there has been no consultation on this proposal and purportedly no public interest in the issue in the last five years;
- the main justification for introducing this Order is because not doing so could undermine efforts to eradicate mink from localised areas or the benefits that competition from otters is having on mink numbers and distribution.

The Committee noted that:

- no evidence has been provided to support the reason for introducing the Order. Furthermore, such evidence as there is (of the practical effect of there being no prohibition for the last

8 years) suggests that the need for the Order is now questionable;

- the Order is being introduced simply to regularise an administrative oversight that appears to have had no practical effect for at least 5 years (possibly 8).

The Committee agreed to the report to the Assembly under Standing Order 21.3:

- that the matter gives rise to a matter of public policy likely to be of interest to the Assembly; and
- that the proposed Order may now be inappropriate in view of changed circumstances since the lapsed 2004 Order was made.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA144

Constitutional and Legislative Affairs Committee Report

Title: The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

These Regulations revoke and replace certain provisions in the Nitrate Pollution Prevention (Wales) Regulations 2008 (“the principal Regulations”), which relate to the designation of nitrate vulnerable zones. The principal Regulations implement, in Wales, Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources. The provision made by these Regulations relates to the review by the Welsh Ministers of the designation of nitrate vulnerable zones in 2009 by the principal Regulations. Provision is made by these Regulations for the Environment Agency to make recommendations to the Welsh Ministers to publish and notify their decisions following those recommendations, and for appeals to be made to the Welsh Ministers and determined by a person appointed by them.

Procedure: Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument at this stage.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument at this stage:-

These Regulations (at regulation 9(4) illustrate a significant change in the drafting style of Statutory Instruments made by Welsh Ministers. When the National Assembly was established in 1999, sub-paragraphs were initially lettered (a), (b), (c), (d), (e), etc. in both language texts of Statutory Instruments. By 2000, they were lettered (a), (b), (c), (ch), (d), etc. in the Welsh text as it was considered that using the Welsh alphabet more faithfully reflected the equal status of the two languages. That practice has continued until now. It means, for example, that sub-paragraph (ch) in Welsh corresponds to sub-

paragraph (d) in the English text, whilst paragraph (d) in the Welsh text corresponds to (e) in English.

When the Assembly acquired the competence to make primary legislation by way of measures under the Government of Wales Act 2006, it was decided to revert to the initial practice of using the English alphabet for the lettering of sub-paragraphs in both language texts. The principal explanation was that as Members would routinely be proposing and debating amendments to draft Measures, it would be less confusing to refer to paragraphs (the third level of sub-division in primary legislation) labelled in the same way in both language texts.

That approach has been continued in relation to Bills introduced during the current Assembly.

The Welsh Government has now decided to extend that approach to statutory instruments, even though they are not capable of being amended in the same way as Bills. Although this ensures a consistent approach in all legislation currently before the Assembly, it is inconsistent with the practice in relation to statutory instruments for the last twelve years or so.

This matter is drawn to the attention of the Assembly under Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

The Government has responded as follows:

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

As reported by the Constitutional and Legislative Affairs Committee, the Welsh Government confirms that the lettering of sub-paragraphs in the Welsh text of statutory instruments will in future use the English alphabet. The reason for using the English alphabet in the Welsh text of bilingual legislation is that we think it removes the potential for confusion to arise in legal proceedings and Assembly debate, particularly where both texts are being referred by means of simultaneous translation. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use.

As recognised in the Committee's report, the change ensures a consistent approach to the lettering of paragraphs and sub-

paragraphs in all bilingual legislation before the Assembly, since the practice in respect of draft Measures and now carried on in respect of Bills, was determined by the Presiding Officer under the Third Assembly. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use, albeit a relatively minor one.

By virtue of paragraph(s) vi, ix of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi, ix of Standing Order 17.42

Document is Restricted