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Member of the Welsh Parliament for
North Wales

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Chair of Legislation, Justice and Constitution Committee

15 April 2024

Dear Chair,

Residential Outdoor Education (Wales) Bill: response to the Legislation, Justice and Constitution Committee's Stage 1 report

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Residential Outdoor Education (Wales) Bill during Stage 1 and for the report which was published on 21 March 2024. I have set out my response to the Committee's conclusions and recommendations at Annex A.

I will also be writing to the Chairs of the Finance Committee and the Children, Young People and Education Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Yours sincerely



Sam Rowlands MS

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Annex A

Response from Sam Rowlands, MS to the Legislation, Justice and Constitution Committee's Report on the Residential Outdoor Education (Wales) Bill

Recommendation 1. In order to meet the Member in charge's policy intent and to provide clarity on its face, the Bill should be amended to include a mechanism by which a pupil, or their parent, would be able to opt out from receiving a course of residential outdoor education.

Response: Accept

The Bill is drafted to amend the Curriculum and Assessment (Wales) Act 2021 ("the 2021 Act") to make providing a course of residential outdoor education a mandatory part of the curriculum, however it is set out in the Explanatory Memorandum that it is not the intention to compel children to attend such a course should they not wish to do so. I have made this point throughout the Stage 1 process.

The Bill does not provide for any "opt-out" or discretionary element as provision is already made in the 2021 Act, and regulations made under that Act, which enable head teachers of maintained schools to determine that provisions of the Curriculum for Wales should not apply to a child or pupil. If a child did not wish to take part in the course of residential outdoor education provided under the Bill, these existing mechanisms would enable the head teacher of the school to make a determination to this effect.

The Committee notes that this would require the pupil or their parent to provide reasons to the headteacher when requesting such a determination, but I consider this to be a benefit as it would enable the headteacher to consider whether anything could be done to address the concerns before the determination is made. Similarly, the Committee notes that the determination only endures for six months, but this gives the pupil the chance to reconsider whether they wish to attend any future opportunities or whether a further determination is required for such future opportunity.

The Bill reinforces that pupils must not be compelled to attend the course of residential outdoor education by providing for guidance to be issued under a new section 71A to the 2021 Act. Such guidance "must provide that residential outdoor education is not compulsory for pupils to attend". I appreciate that the guidance itself cannot change the legal effect of the Bill, which makes residential outdoor education a mandatory part of the curriculum. However, the intention is that the guidance would clearly set out that head teachers should use their power under the relevant Regulations to determine that the requirement to provide a course of

residential outdoor education under the curriculum does not apply to children who do not wish to attend.

Given the existing mechanisms that are already in place as set out above, it is not necessary to make any amendment to the Bill to allow the disapplication of the requirement to provide a course of residential outdoor education. However, I would be happy to explore whether such an amendment could be brought forward at Stage 2 if that would make the intention clearer, and its effect easier to manage in practice.

Recommendation 2. The Bill should be amended to include a definition of residential outdoor education.

Response: Reject

During the development of the Bill and the evidence that was gathered during the course of Stage 1, there have been varying views on whether residential outdoor education should be defined on the face of the Bill and, if so, what should be encompassed in such a definition.

Given the varying views on this, I consider that to fix a definition on the face of the Bill would be potentially limiting on its future operation, as any amendment to that definition to reflect changes in practice or demand for certain elements of outdoor education would require further primary legislation or the use of a Henry VIII power (which, in the latter case, would of course enable primary legislation to be changed by the Welsh Government with limited opportunity for scrutiny by the Senedd).

I consider that the concept of residential outdoor education is adequately set out in the Explanatory Memorandum to the Bill. The Bill also provides for a residential outdoor education Code, which could set out in much more detail what a course of residential outdoor education should look like in practice. Taking this approach would provide more flexibility for any definition to react to changes in practice and give schools more flexibility to determine the type of experience that is appropriate for its pupils.

Recommendation 3. The Bill should be amended to:

- remove the references to prescribed requirements that must be set out in guidance from new section 71A of the Curriculum and Assessment (Wales) Act 2021, to be inserted by section 1(3); and
- insert those prescribed requirements, in an appropriate form, into new section 64A of the Curriculum and Assessment (Wales) Act 2021, to be inserted by section 1(2).

Response: Accept in principle

The references in the new section 71A to prescribed requirements that must be set out in guidance are:

- providing that residential outdoor education is not compulsory for pupils to attend;
- providing that residential outdoor education is suitable to a pupil's age, ability, aptitude and any additional learning needs;
- providing that residential outdoor education be provided in Welsh, subject to availability, where requested by a school; and
- making provision in respect of the costs that it would be reasonable to incur in connection with residential outdoor education, including, but not limited to, the cost of board and lodging and transport.

I note the Committee's concerns regarding the manner in which these requirements are addressed by the Bill however, in some instances, for example, in relation to making provision regarding reasonable costs, it may be too prescriptive to set this detail out on the face of the Bill.

I am, however, able to accept the recommendation in principle. Should the Bill proceed to Stage 2, I am willing to consider each of the requirements set out above to determine whether they can be prescribed or dealt with in a different way in order to address the Committee's concerns.

Recommendation 4. In light of recommendation 3, the Member in charge should consider whether it is necessary for new section 71A(1) of the 2021 Act to impose a duty on the Welsh Ministers to issue guidance on residential outdoor education. If a duty to issue guidance is deemed to be necessary, such a duty should be included as a standalone provision within the 2021 Act which is not connected to section 71, and the Bill amended accordingly.

Response: Accept

Notwithstanding any changes that are made to the Bill at Stage 2 to reflect recommendation 3, I still consider that the Welsh Ministers should be under a duty to issue guidance to address the other matters set out in the proposed section 71A of the 2021 Act. However, I would be willing to bring forward an amendment to include this duty as a standalone provision which is not connected to section 71 of the 2021 Act.

Recommendation 5. In order to ensure the effectiveness of the Bill's provisions, the Member in charge should consider whether the Bill should be amended to remove the references to "subject to availability" and "where requested" from new section 71A(3)(d) of the Curriculum and Assessment (Wales) Act 2021, as inserted by section 1(3) of the Bill.

Response: Reject

If amended as suggested above, section 71A(3)(d) of the 2021 Act would state that guidance must provide that residential outdoor education be provided in Welsh. This would have the effect that whenever a school is seeking to offer a course of residential outdoor education under the 2021 Act, they would have to have due regard to the requirement in guidance that it be provided in Welsh. This could have the unintended consequence that schools that do not wish for the course to be provided in Welsh will be deterred from considering providers who offer Welsh language provision, on the basis they may then need to take up that offer even if it is not appropriate for their pupils who are not Welsh speakers. It may also result in providers who are not able to offer an experience through the medium of Welsh declining to make any offer at all, which would in turn limit opportunities for children to experience residential outdoor education.

The purpose of this provision being subject to availability and demand is to ensure that it is the schools that will determine what is the best experience to offer their pupils, having regard to the requirements in relation to Welsh language and culture set out in the guidance. It is also intended to ensure that providers who are able to offer Welsh language provision are not overwhelmed by demand or, conversely, that schools do not consider they are unable to offer an opportunity

that complies with the guidance due to the unavailability of the Welsh language provision.

Recommendation 6. In light of the Minister's comments, the Member in charge should consider whether the Bill should be amended to extend the date by which the first Residential Outdoor Education Code and guidance must be issued

Response: Accept

My aim in this Bill is to ensure that the Welsh Government provides a course of residential outdoor education free of charge, once, to pupils at maintained schools. If the Minister is of the opinion that more time would be required to ensure that a full and useful Code and guidance are available to support this provision, I would be willing to consider tabling amendments to give effect to this at Stage 2. However, I would caveat this by saying that I would expect the Minister to give a specific time frame which I would want to be reflected on the face of the Bill.