

## Briefing for the Petitions Committee

Y Pwyllgor Deisebau | 25 Medi 2018  
Petitions Committee | 25 September 2018

### Research Briefing: Presumption in favour of rural schools

Petition number: [P-05-828](#)

Petition title: **Presumption in favour of rural schools**

#### Text of petition:

We call on the Government to take steps to ensure that local authorities follow the guidelines within the current School Organisation Code and the new version of the Code (when it comes into force), including that they operate in accordance with the presumption in favour of rural schools. We accept that this does not mean that a rural school will never close, but the recent decision by Anglesey Council's Executive Committee to close Ysgol Bodffordd demonstrates that local authorities are free to ignore the new Code (that they are supposed to act in accordance with its spirit) and close even full and popular schools.

### 1. Summary

- The Cabinet Secretary for Education has prioritised creating a **presumption against the closure of rural schools**. This is **not yet in force** and local authorities are only required to follow the existing School Organisation Code, issued in 2013.
- A **proposed new School Organisation Code** designates approximately **200 schools (including Ysgol Bodffordd)** as 'rural schools' which would be covered by a presumption against closure. This does not mean these schools will definitely not close but there must be a stronger case for doing so, including consideration of all other viable options.
- The Welsh Government **laid the new Code** before the Assembly on 17 September 2018. The new Code is currently undergoing the Assembly's **Negative procedure for subordinate legislation**, subject to which it will **come into force on 1 November 2018**.
- In the meantime, the Cabinet Secretary for Education has **asked local authorities to 'take the spirit'** of the draft Code into account. However, they are under **no obligation to comply** with it and there is **no statutory barrier** to Isle of Anglesey County Council taking forward the proposal referred to by the petition, providing it has complied with

the current 2013 Code. The **new Code will not apply to proposals which have already undergone consultation** as is the case in this proposal. Such proposals must therefore be considered under the existing 2013 Code.

- On 17 September 2018, Isle of Anglesey County Council launched a pre-planning application consultation regarding the proposal. However, as at the time of writing (18 September), it has not issued the statutory notice to take the proposal to the next stage. The local authority will need to do so by 2 October 2018, otherwise it will have to commence a new consultation exercise.

## 2. Priority for the Cabinet Secretary for Education

One of the [ten education priorities agreed by Kirsty Williams with the First Minister](#) upon her appointment as Cabinet Secretary for Education in June 2016 was a:

- Review of current policy of surplus places with an emphasis on rural schools and taking account of future growth trends.

During summer 2017, the [Welsh Government consulted](#) on introducing a presumption against the closure of rural schools through revising the School Organisation Code. The Code provides statutory guidance to local authorities on how to exercise their functions under the [School Standards and Organisation \(Wales\) Act 2013](#), in respect of closures and amalgamations of schools.

In the [consultation document](#), the Cabinet Secretary for Education said:

I know, and parents across rural communities know, that small and rural schools play an important role in raising standards and extending opportunities for all. Indeed, they are often critical in engaging pupils and families from the most disadvantaged backgrounds in rural areas and raising pupil aspirations. I also know that maintaining the provision of an accessible school in some small, rural communities can make a **significant contribution to the long-term sustainability of the local community**.<sup>1</sup>

## 3. The current School Organisation Code

The [School Organisation Code \(2013\)](#) sets out the process local authorities must follow when considering amalgamating or closing schools and is subordinate legislation made under the [School Standards and Organisation \(Wales\) Act 2013](#). The Research Service published a [Quick Guide to School Organisation Proposals](#) in 2015, which sets out the current position.

The 2013 Code remains in force until any new Code passes through the Assembly's legislative process. Relevant bodies (predominantly local authorities) are required to comply with the existing 2013 Code and are under **no obligation to comply with any proposed successor Code** before this point in time.

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<sup>1</sup> Cabinet Secretary for Education, Kirsty Williams, Foreword to [Consultation Document 'School Organisation Code'](#), June 2017

The new legal framework introduced by the 2013 Act and detailed in the 2013 Code represented a shift away from the previous system, where any formal registered objection to a school organisation proposal resulted in it being referred to the Welsh Ministers for determination. Under the post-2013 system, proposals can be decided upon by the relevant body (usually local authorities) other than in stated exceptions and as long as relevant bodies comply with a stipulated process.

The exceptions in which school closure proposals are to be determined by the Welsh Ministers are:

- The proposals affect sixth form education;
- The proposals have been made by a body other than the relevant local authority and that local authority objects to the proposal;
- A decision made by the local authority on a proposal is referred to the Welsh Ministers by one of the following eligible persons:
  - Another local authority affected by the proposals;
  - Where the school is a faith school, the appropriate religious body;
  - Where the school is a voluntary or foundation school, the governing body or a trust holding property on the school's behalf;
  - A further education institution affected by the proposals.

### 3.1 Proposal in Isle of Anglesey

On 30 April 2018, [Isle of Anglesey County Council's Executive resolved](#) to close two community primary schools, Ysgol Bodffordd and Ysgol Corn Hir, and build a new replacement school. This is the proposal which the petition refers to and has been reported on by [BBC Wales](#).

The new school will either be on one site to replace Ysgol Bodffordd and Ysgol Corn Hir, or be located across two sites following amalgamation with Ysgol Henblas although this is dependent on a future assessment on whether standards at Ysgol Henblas have improved.

The proposal **does not appear to fall under any of the exceptions for referral to the Welsh Ministers** stated in the School Organisation Code (2013) and set out above. It can therefore be determined by the local authority without referral to the Welsh Ministers. As the Cabinet Secretary's letter states, Isle of Anglesey County Council is **required to publish the statutory notice** taking forward its decision taken on 30 April 2018 within 26 weeks (**by 2 October 2018**) otherwise the local authority will have to undertake a new consultation process, details for which are set out in the Code.

On 17 September 2018, Isle of Anglesey County Council launched a [pre-planning application consultation](#) regarding the construction of a new Primary School in Llangefni to replace Ysgol Corn Hir and Ysgol Bodffordd. At the time of writing (18 September 2018), the local authority

has not yet issued a statutory notice to take forward its Executive's decision of 30 April 2018.

Under the current Code (chapter 4), the statutory notice must provide for a **28 day period for persons to register objections**. If any objections are received, the local authority must publish an Objection Report summarising the statutory objections and its response to those objections. This must be published within seven days of the date of determination.

Once a local authority **determines its proposal** and publishes an objection report (which itself **must not take place before 28 days after publication of the statutory notice**), the local authority can only delay or bring forward implementation from the date specified in the statutory notice, or abandon the proposal, with the agreement of the Welsh Ministers.

## 4. Proposed new School Organisation Code

The Welsh Government [consulted during summer 2017](#) on proposals to revise the School Organisation Code and introduce a presumption against the closure of rural schools. The consultation sought views on a number of proposed changes to the Code following three years of operation based on feedback and learning over that period. The only substantial changes proposed were to 'strengthen' the Code in respect of a **presumption against closure of rural schools** and a means of **compiling a list of what constitutes a 'rural school'**.

### 4.1 Presumption against closure of rural schools

The proposed new Code will introduce a specific presumption against the closure of rural schools. This will require proposers to follow a **more detailed set of procedures and requirements in formulating a rural school closure proposal** and in consulting on and reaching a decision as to whether to implement a rural school closure proposal. As the Cabinet Secretary for Education said in her Foreword to the [consultation document](#):

A presumption against the closure of rural schools **does not mean that rural schools will never close**. However, it does mean that the **case for closure must be strong and not taken until all viable options to closure have been conscientiously considered**, including federation. [our emphasis]

Paragraph 1.8 of the [draft School Organisation Code consulted on in summer 2017](#) provides the detail for how local authorities would have to apply the presumption against closure of rural schools, including specific further steps they would have to take if formulating such a proposal.

### 4.2 Designating rural schools

The other main proposal in the consultation document was to introduce a means of designating rural schools. The Welsh Government proposes an approach which uses a generic definition of rural areas so that any school within those areas would be automatically designated as rural for the purpose of school organisation proposals.

A **proposed list of 191 rural schools** was included in Annex F of the draft version of the School Organisation Code which was under consultation. The consultation document states that this would be the minimum number of schools which should be designated as rural.

The list of 191 schools consulted on in summer 2017 to be designated as rural schools and therefore covered by the presumption against closure, **includes Ysgol Bodffordd and Ysgol Henblas**. If the proposed new Code were to be in place before Isle of Anglesey County Council's proposal was finalised, whilst not necessarily preventing the school's closure, the local authority would have to demonstrate a strong enough case to overcome the presumption against closure.

The Welsh Government published a [summary of the 2017 consultation responses](#) on 2 July 2018. The Cabinet Secretary for Education told the Children, Young People and Education (CYPE) Committee during a [general scrutiny session on 28 June 2018](#) (paras 60–76) that the consultation had given rise to calls for the definition of a rural school to be widened, which would take in a **further 28 schools, bringing the total up to 219**. The Welsh Government has consulted those additional local authorities who would be affected, which it says has delayed the introduction of the new Code.

### **4.3 Laying of the new Code and timescale for coming into force**

The Cabinet Secretary also told the CYPE Committee in June 2018 that there was insufficient time to lay the new School Organisation Code before the Assembly ahead of the summer recess and that it would be laid 'as quickly as we can in the new [autumn] term'.

On **17 September 2018**, the [Cabinet Secretary issued a statement](#) announcing the [laying of the draft School Organisation Code](#). Under the Assembly's **Negative procedure** for subordinate legislation, Assembly Members have 40 days (excluding any recess period of longer than 4 days) to annul the legislation, otherwise the new School Organisation Code can come into effect. Subject to this, the Cabinet Secretary's statement says it is expected the new Code will **come into force on 1 November 2018**.

**However, the new Code will not apply to proposals, which have already undergone a statutory consultation** under the existing 2013 Code. Page 3 of the new Code states:

If a proposer has commenced consultation before 1 November 2018 the proposal **must** be published and determined in accordance with the first edition of the Code. Consultation will be considered to have commenced where a consultation document, required by section 3.2 of the first edition of the code, has been published.

## **5. What happens in the meantime?**

When asked what would happen to schools (such as is the case with Ysgol Bodffordd) whose status would be protected to a greater extent under the new Code but are faced with closure

in the meantime under the existing Code, the Cabinet Secretary said in [Plenary on 25 April 2018](#) (paras 18–23):

What I would say to local authorities that are considering this matter at the moment is that I have been very clear about my direction of travel and my policy intention, and **I would urge them to take the spirit of that into consideration** between now and any formal publication of the new organisation code. [our emphasis]

The CYPE Committee [wrote to the Cabinet Secretary on 6 June 2018](#) expressing concern at the continued uncertainty this poses to schools who are faced with possible closure. The CYPE Committee asked how the Welsh Government is ensuring local authorities are considering ‘the spirit’ of future policy into account and what is being done to **protect schools from long-term decisions** being made while the Code is not finalised.

The Cabinet Secretary [responded to the CYPE Committee on 29 June 2018](#), saying:

I have been very clear in respect of the direction of travel of this policy and **my expectation that local authorities act in the spirit** of the proposed changes. However, I have also pointed out on a number of occasions that the **statutory Code is not retrospective** and that any changes to the existing Code will not have effect until the second version of the Code comes into force. With that in mind, whilst I have made my expectations clear, there is **no statutory requirement** on local authorities and other proposers to **comply with provisions in the second version of the Code until it comes into force**. [our emphasis]

In terms of the petitioners’ specific case, there are **no statutory barriers** to Isle of Anglesey County Council going ahead with its decision to close the schools, provided it has not contravened the existing School Organisation Code (2013). Complainants could mount a judicial review of the decision (which is an expensive option) or complain about maladministration to the Public Services Ombudsman although this relates to the process followed, not the decision’s merits.

The local authority is under no requirement to conform with any stated policy intention of the Welsh Government or prospective Code in draft form. Furthermore, as stated above, **the new Code will not apply to proposals which have already undergone consultation prior to the new Code coming into force**. Therefore, the fact that Isle of Anglesey County Council might not have determined the proposal before 1 November 2018 will not in itself prevent it from going ahead with the proposal. However, the local authority will need to issue a statutory notice by 2 October 2018 otherwise it will need to undertake a new consultation exercise due to 26 weeks having elapsed since the end of the previous consultation period.

The Committee may wish to note that Isle of Anglesey County Council’s [report accompanying its Executive decision on 30 April 2018](#) indicates that the **financing of the replacement school building(s) is reliant on Welsh Government funding** (see section 11 of report).

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.