



Ein cyf/Our ref LF/LA/0172/12

Christine Chapman AM
Chair
Children and Young People Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

24 May 2012

Dear Christine,

**CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE
SCHOOL STANDARDS AND ORGANISATION (WALES) BILL**

Thank you for your letter of 11 May following my appearance before the Children and Young People Committee on 9 May. I agreed to provide the Committee with further details on a number of issues relating to intervention in schools and local authorities. Please find attached:

1. A table setting out the grounds for intervention under the Bill and how they differ from the existing grounds for intervention (tables 1 & 3). For the Committee's information I have also included tables showing how the powers of intervention under the Bill differ from existing powers of intervention and the rationale for the changes (tables 2 & 4).
2. Details of the number of schools identified by Her Majesty's Inspectorate for Education and Training in Wales as requiring follow up activity in the last annual reporting year (2010/11), along with an estimate of those where local authorities could have taken action under their existing powers of intervention.
3. Examples of instances when the Minister has exercised his power to intervene in the running of local authority' education services and all associated costs (including Pembrokeshire County Council and Blaenau Gwent County Borough Council Education Services).
4. Finally, the Committee requested examples of instances where local authorities have appointed additional governors to a governing body using their existing powers of intervention. The Welsh Government does not monitor the use of a local authority's powers to appoint additional governors or remove delegation for a schools budget. These are matters for the local authority and this information can only be obtained by approaching authorities directly. However, where a local authority proposes to use its powers of intervention to appoint an interim executive board they may only do so with the consent of Welsh Ministers. As of today's date there has only ever been one

appointment of an Interim Executive Board in Wales, in relation to St Albans RC Primary School in Cardiff earlier this year.

I trust that the information contained in the annexes attached is helpful and responds to the Committee's specific questions.

Yours sincerely

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a period at the end.

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Table 1: Grounds for intervention in the Bill by local authorities and Welsh Ministers in the conduct of a maintained school and how the grounds differ from existing legislation.

Grounds in School Standards and Organisation (Wales) Bill	Section in School Standards and Framework Act 1998 Act where Ground derived	The change	Rationale
<p>Ground 1 <i>Standards of performance are unacceptably low</i></p>	<p>Section 15(2)(a)(i)</p>	<p>Removed the words: “and are likely to remain so unless the authority exercise powers under ss.16, 16A and 17”</p>	<p>The Welsh Government considers that the fact such standards are unacceptably low is enough to trigger the need for intervention. If standards are that low that has not happened overnight and a quick response is now needed.</p>
<p>Ground 2 <i>Breakdown in the way the school is managed or governed</i></p>	<p>Section 15(2)(a)(ii)</p>	<p>Removed the words: “which is prejudicing or likely to prejudice such standards of performance”</p>	<p>The Welsh Government considers that the fact there has been such a breakdown is enough to trigger the need for intervention. If behaviour is that poor, again that has not happened overnight and a quick response is now needed.</p>
<p>Ground 3 <i>Behaviour of pupils or action taken by their parents is severely prejudicing or likely so to do, the education of those pupils</i></p>	<p>Section 62</p>	<p>Ground would apply if it could be shown that it was likely in the immediate future to prejudice education. Now removed the word: “immediate”</p>	<p>The Welsh Government consider that the fact there has been such behaviour/action is enough to trigger intervention without the need to show that severe prejudice is likely in the <i>immediate</i> future.</p>
<p>Ground 5 Governing body or head teacher failed, or likely to fail, to comply with a duty in the Education Acts & Ground 6 Governing body or head teacher acting, or proposing to act unreasonably in the exercise of their functions under the Education Acts</p>	<p>Section 15(2)(a)(iv) & (iv)</p>	<p>The existing grounds refer to a failure by the governing body to comply with the School Teacher Pay and Conditions Document.</p> <p>However, whilst the new grounds include that failure they also go further, in that the failure may relate to any education function. The grounds are also engaged by a failure by the head teacher and the governing body.</p> <p>In effect these new grounds provide local authorities with the same powers of intervention in schools as the Welsh Ministers</p>	<p>The Bill provides that local authorities should take action first, but if they fail to do so, or do so inadequately, then the Welsh Ministers will intervene. That scheme can only work if the same grounds for intervention exist for local authorities and Welsh Ministers. This amendment ensures that is the case.</p> <p>In addition, the revised grounds allow a local authority to make a proportionate intervention at an early stage to help support a school that is seen to be failing.</p> <p>The proposals also recognise that governing bodies and head teachers should, in discharging all of their education Functions, act reasonably.</p>

		have in sections 496 and 497 of the Education Act 1996 in relation to local authorities. As drafted sections 496 and 497 do not apply to head teachers but this is amended in this Bill so that they do also apply to head teachers.	
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Table 2: New Powers of intervention in the Bill for local authorities and Welsh Ministers in the conduct of a maintained school and their purpose

The difference in the actual powers available is quite small. The key change is that some powers are now available when any of the grounds exist – except for the Welsh Ministers’ power to direct closure of a school under section 16 which only applies in relation to Ground 8 (school requiring special measures).

New local authority power	New Welsh Ministers’ power
<p>Section 5: Power to require a governing body to secure advice or collaborate</p> <p>The power for a local authority to require a governing body to secure advice and/or to collaborate under Part 1 of the Education (Wales) Measure 2011 is new.</p>	<p>Section 12: Power to require a governing body to secure advice or collaborate</p> <p>The power for the Welsh Ministers to require a governing body to secure advice and/or to collaborate under Part 1 of the Education (Wales) Measure 2011 is new.</p>
<p>Section 9: General power to give directions and take steps</p> <p>The general power for a local authority to give directions to a governing body and require it to take steps/for the local authority to steps is new.</p>	<p>Section 17: General power to give directions and take steps</p> <p>The general power for the Welsh Ministers to give directions to a governing body and require it to take steps/for the Welsh Ministers to take steps is not new. However, the ability to give such directions to head teachers and to require them to take steps is new.</p>
	<p>Section 20: Guidance</p> <p>The power for the Welsh Ministers to issue statutory guidance in relation to school intervention is new.</p>
	<p>Schedule 1: Interim executive members</p> <p>This Schedule is not new, but there is one minor technical amendment in paragraph 13(2) of Schedule 1. This change allows the Welsh Ministers to apply provisions in regulations affecting the constitution of governing bodies to interim executive boards e.g. the requirements to follow the staff disciplinary process in the Staffing of Maintained Schools (Wales) Regulations 2006.</p>

Rationale

Under existing legislation (School Standards and Framework Act 1998) local authorities only have fairly draconian powers to appoint additional governors, remove delegation for a school’s budget or replace the school governing body with an interim executive board. This means that local authorities do not have the power to simply direct a governing body to do something if the governing body is acting unreasonably or is in breach of its duties.

Conversely, Welsh Ministers have the power to give whatever directions they consider expedient to a governing body about the exercise of any power or duty of theirs under the Education Acts, where they are satisfied that they have acted, or are proposing to act, unreasonably or have failed to

discharge a duty (section 496 to 497A of the Education Act 1996). This power is subject to public and administrative law principles of reasonableness (in the *Wednesbury* sense).

This is inappropriate as it is the Welsh Government's intention that local authorities should be the first to take action in schools causing concern. It is only if the local authority fails to take action or does so inadequately that the Welsh Ministers will intervene.

Therefore, under the Bill the local authority will retain all of the existing powers, but in addition would be able to direct a governing body to do something if the governing body is acting unreasonably or is in breach of its duties, or require a weak school to collaborate with another school or to work with a partner on school improvement. It will also be able to require a governing body to collaborate under the Education (Wales) Measure 2011. The addition of these new powers will allow local authorities to differentiate their responses according to circumstances, so that they do not hang back from engaging with the school until the problem becomes critical.

Table 3: Grounds for intervention by Welsh Ministers in the education functions of a local authority and how the grounds differ from existing legislation

Grounds in School Standards and Organisation (Wales) Bill	Section from existing legislation it derives from	The change	Rationale
Ground 1: The local authority has failed, or is likely to fail, to comply with a duty that is an education function.	Section 497 of the Education Act 1996: Power to prevent failure to discharge duty under the Act.	No change	Consolidation on the face of the Bill of all provisions relating to intervention by Welsh Ministers in the Education functions of local authorities alongside provisions relating to intervention by local authorities and by Welsh Ministers in schools.
Ground 2: The local authority has acted, or is proposing to act, unreasonably in the exercise of an education function.	Section 496 of the Education Act 1996: Power to prevent unreasonable exercise of functions of local authorities	No change	
Ground 3: The local authority is failing, or is likely to fail, to perform an education function to an adequate standard.	Section 497A of the Education Act 1996: General default powers to issue a direction where the local authority has failed to discharge a duty under the Act.	No change	

Table 4: Changes to Welsh Minister's Powers to intervene in the Education Functions of a local authority

Section 25:

Power to require a local authority to obtain advisory services (this is replicated from section 63 of the Education Act 2002, however the circumstances when this power is engaged are now wider and it is now engaged when any of the grounds for intervention exist).

Schools requiring follow up activity 2010-2011

The Committee requested details of the number of schools that had failed an inspection by Her Majesty's Inspectorate for Education and Training in Wales in the last annual reporting year, along with an estimate of those where local authorities could have taken action under their existing powers of intervention. Estyn does not use the term 'failing' an inspection as it has no legal basis. However, the table below sets out the number of schools inspected by Estyn which required some form of follow up activity in 2010-11 including those found to be in need of significant improvement or special measures.

At the time of Estyn's annual report there were 1,435 schools in Wales. Estyn inspected 279 of these schools (238 primary and 31 secondary) which equated to 19% of schools in Wales.

Total no. of inspections (a)	Excellent practice	Local authority monitoring	Estyn monitoring	Significant improvement	Special measures
279	31	57	51	10	4

(a) Number of all maintained primary, secondary and special schools and pupil referral units inspected in 2010-2011.

The table shows that 14 (or 5%) of the schools inspected were in need of significant improvement or special measures.

Under the current legislation a local authority may intervene in a school it maintains where:

- the governing body has failed to comply with a warning notice;
- the school has been deemed by Estyn to require significant improvement;
- the school has been placed in special measures.

The schools that a local authority should take action under their powers of intervention are those that Estyn has (or potentially could when inspected) place in a statutory category of special measures or significant improvement. Accordingly, local authorities could have taken action using their existing powers of intervention for all 14 of the schools later deemed by Estyn to require significant improvement or placed in special measures. Local authorities should know their schools well and should be able to identify where they are a cause for concern. It is fair to assume that the issues identified by Estyn in these schools around poor standards of performance and weak management and leadership did not happen overnight and that had the local authority intervened at an early stage by issuing a warning notice and where necessary using their powers of intervention fewer of these schools would have gone on to be placed in these categories by Estyn.

Robust challenge and support under local authorities' school improvement function (without recourse to powers of intervention) should be sufficient for those in local authority or Estyn monitoring. However, there will be circumstances where the performance of these schools dips and a warning notice may be necessary to prevent these schools from later being placed in one of the Estyn categories.

We also need to take into account the fact that these figures relate to those schools that were inspected only. If we were to assume that 5% of the total number of schools in Wales would be deemed by Estyn to require significant improvement or special measures following inspection, it would equate to 72 schools requiring significant improvement or special measures in Wales.

Examples of instances when the Minister has exercised his power to intervene in the education functions of local authorities

Intervention in the Education Functions of Blaenau Gwent

Estyn published its inspection report on the quality of Local Authority Education Services for Children and Young People in Blaenau Gwent in July 2011. In its summary judgement Estyn found the local authority's education services to be unsatisfactory and the authority's capacity to improve to be unsatisfactory and that the authority required special measures.

In view of the seriousness of the failure of the authority to adequately perform the education functions covered in the Estyn report, and the extent of those failures, on 5 September 2011 the Minister for Education and Skills issued a Direction to Blaenau Gwent using his powers under section 497A of the Education Act 1996.

Currently, if the Welsh Ministers are satisfied that a local authority is failing in any respect to perform its education functions they may exercise their powers under section 497A of the 1996 Act. In such circumstances the Welsh Ministers may direct that the authority's education functions be performed on behalf of the authority by a person specified in the direction or that those functions be exercised by a person nominated by the Welsh Ministers. These powers will be restated in the School Standards and Organisation (Wales) Bill.

The Direction in Blaenau Gwent involved the appointment of two Education Commissioners, who from that date assumed responsibility for all of the education functions of Blaenau Gwent that were previously the responsibility of the Executive. In addition the Minister appointed two Advisory Education Commissioners to provide support and challenge to the Education Commissioners in their role. This direction will be in place until 31 March 2013 or until it is revoked by the Welsh Ministers, if earlier. The Minister reviews the authority's compliance and the effectiveness and continued necessity of the Direction at 4 monthly intervals.

The costs associated with the Minister's use of his powers of intervention in Blaenau Gwent to date are £118k. We expect a local authority to bear the costs of any intervention.

Intervention in Pembrokeshire County Council

The Welsh Ministers issued a direction to Pembrokeshire County Council under section 29 of the Local Government (Wales) Measure 2009 and section 497A of the Education Act 1996 dated 16 August 2011. The Direction required the authority to ensure that its statutory obligations are met in relation to children such that the authority should not allow anyone coming into contact with children on behalf of the authority to do so unless all relevant checks as required by the authority's own policies and procedures and any associated statutory requirements are undertaken for all such people.

The Direction also required the authority to cooperate with and provide information to the Ministerial Advisory Group appointed by the Welsh Ministers. The Ministerial Advisory Group supported the authority in relation to the preparation of an action plan and in considering the authority's procedures and policies for safeguarding. Subsequently the Direction was revoked in October 2011 and the Pembrokeshire Ministerial Board appointed to act as a critical friend to Pembrokeshire Local Authority and provide external support and challenge to tackle the problems identified by the Ministerial Advisory Group.

The cost of funding the original Ministerial Advisory Board was under £15,000 whilst the total budget required to fund the Pembrokeshire Ministerial Board will be in the region of £90,000.