

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LA/LF/276/12

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

21 August 2012

Dear Chair,

School Standards and Organisation (Wales) Bill – Code on School Organisation

I am aware that the Committee has written to me with additional questions in respect of the School Standards and Organisation Bill and my response to those questions will follow separately. This letter covers a different issue and I believe will further assist the Committee in its deliberations.

When I attended the Committee's meeting on 19 July 2012 to give evidence on the Bill, you asked if the Committee could have a copy of the draft School Organisation Code before it reports on the Bill. I responded that I did not think this would be possible as the Code would not be ready until the start of Stage 2.

However, having considered the matter further, it appears to me that it may be helpful to the Committee's deliberations if I were to set out for you some of the expected content of Code, specifically in relation to the consultation those bringing forward school organisation proposals will be required to undertake, and in relation to the operation of local determination panels. I am aware that these are matters which are crucial to the success of proposed new system and are consequently of great interest to Committee members.

In relation to consultation, the draft Code will:

- list those with whom consultation on proposals must be conducted.
This list will include amongst others, relevant local authorities, diocesan authorities, governing bodies, schools councils, parents, staff, further education institutions, AMs and MPs, community or town councils, trades unions and Estyn
- set out in detail the information to be included in the documents to be sent to consultees.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Leighton.Andrews@wales.gsi.gov.uk

Printed on 100% recycled paper

This information will include a description of the current position, proposed changes and anticipated benefits and disadvantages; various statistics and facts about any existing schools which are affected; and appraisals of the proposal's impact on educational standards, finance and other matters.

- set out when and for how long consultation must be conducted – namely a minimum of six weeks, with at least 3 weeks falling in term time.
- require specific arrangements for consultation with children and young people which promote their right to express their views and have them taken into account.

In relation to the operation of local determination panels, and in addition to the information already set out in Schedule 3 to the Bill, the draft Code will provide information on:

- The recruitment and composition of local determination panels (LDPs)

Providing they are not disqualified persons, the draft Code will suggest that local authorities may decide to appoint LDPs made up of local authority members only, or of persons unconnected with the local authority (including members of another local authority), or of any combination of the two. It will require that local authorities ensure that at least one member of the panel has direct experience of working in the education sector.

In the event that the LDP is to be comprised of local authority members only, the draft Code will state that local authority should consider making it politically balanced in the sense set out at sections 15 and 16 of the Local Government and Housing Act 1989.

The draft Code will note that local authorities may wish to recruit, train and retain a pool of eligible persons to appoint to an LDP as and when required. It will suggest that this would provide a number of advantages including reducing the time required to set up a LDP when one is required and enabling the local authority to ensure potential LDP members have sufficient training.

The draft Code will also suggest that local authorities could co-operate to develop shared regional pools. It will note that this would increase the potential number of eligible and suitably experienced candidates whilst at the same time providing more opportunities for panel members to gain experience and develop expertise in making school organisation decisions. However, when appointing panels from any such regional pool, the draft Code will state that local authorities should look to ensure at least some members have specific local knowledge.

- The training of LDP members

The draft Code will require that local authorities ensure that all LDP members receive appropriate training before considering proposals, and that experienced panel members are kept abreast of any amendments to guidance and are given the opportunity of undertaking refresher training. It will suggest that training need not be extensive but must ensure that LDP members are familiar with the guidance contained in the draft Code and are familiar with the relevant parts of the 2013 Act. The draft Code will state that it is for each local authority to decide how training is delivered to the LDP members who will consider proposals in their area. However, the draft Code will note that there would be nothing to prevent two or more local authorities collaborating to deliver training which, in addition to possible financial savings, could provide benefits such as the wider sharing of good practice.

- Clerks to the LDP and legal advice

The draft Code will note that the clerk is not a member of the LDP but will have an important part to play as an independent source of advice. It will require that clerks have a good understanding of the draft Code and the relevant parts of the 2013 Act and should have received appropriate training. The draft Code will note that the clerk can be a member of staff employed by the local authority but will require that they have not been involved at any stage in the proposal that the LDP are considering. Furthermore, the draft Code will require that the clerk does not play any part, nor have an interest in, the decision reached by the LDP members.

The draft Code will note that the key tasks of the clerk are to:

- i. make the necessary administrative arrangements for the LDP;
- ii. be an independent source of advice on procedure, the draft Code and the relevant parts of the 2013 Act;
- iii. record the proceedings, decision and the reasons;
- iv. notify in writing the proposer, the local authority (if it is not the proposer) and the Welsh Ministers of the LDP's decision and the reasons for it.

The draft Code will require that the local authority, where necessary, provides the LDP with appropriate legal advice.

- The evidence to be considered by LDPs

Section 52 of the Bill and the draft Code will require that the local authority forwards the following documents to the appointed clerk within 42 days of the end of the objection period:

- i. a copy of the consultation document;
- ii. a copy of the consultation report (which will summarise and respond to the issues raised by consultees and set out Estyn's view);
- iii. a copy of the published notice;
- iv. a copy of the objection report (which will summarise and respond to the objections);
- v. copies of the statutory objections.
- vi. copies of all of the above in relation to any proposals which are related to the proposals requiring determination by the LDP

The draft Code will state that decisions should be reached on the basis of written evidence set out above but that the LDP may take into account any further relevant information (e.g. Findings of an auditor's investigation, scrutiny committee, Ombudsman report), and can seek written clarification in relation to the information it receives. The Code will further state that LDPs should not seek or consider new information, unless they consider it will assist in the determination within the timescale, and should not consider oral representations.

The draft Code will require that in reaching their decisions, LDPs have regard to the determination factors set out in a separate section of the draft Code. These will largely mirror current guidance on school organisation contained in Circular 21/09 – that is the factors that the Welsh Ministers currently consider when deciding disputed

proposals. The factors will continue to focus on ensuring that changes to school provision will protect and promote the interests and rights of learners.

Finally, the draft Code will require that decisions made by the LDP are issued in writing within 1 week of the decision being made, with the reasons for the decision set out in full.

I trust that this information will provide Committee Members with useful context in their consideration of the school organisation provisions included in the School Standards and Organisation Bill and will help them to better understand how it is proposed the new determination process will operate. The final detail of the process and content of the Code will of course depend on the outcomes of Assembly scrutiny and the responses of stakeholders to the consultation in the Autumn.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Leighton Andrews', written in a cursive style.

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