

**National Assembly for Wales**  
Children and Young People Committee

School Standards and  
Organisation (Wales) Bill:  
Stage 1 Committee Report

October 2012



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Stage 1 Committee Report

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## Children and Young People Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the education, health and wellbeing of the children and young people of Wales, including their social care.

### Current Committee membership



**Christine Chapman (Chair)**

Welsh Labour  
Cynon Valley



**Angela Burns**

Welsh Conservatives  
Carmarthen West and South  
Pembrokeshire



**Jocelyn Davies**

Plaid Cymru  
South Wales East



**Suzy Davies**

Welsh Conservatives  
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**Rebecca Evans**

Welsh Labour  
Mid and West Wales



**Julie Morgan**

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Cardiff North



**Lynne Neagle**

Welsh Labour  
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**Jenny Rathbone**

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Cardiff Central



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Welsh Liberal Democrats  
North Wales



**Simon Thomas**

Plaid Cymru  
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## **Summary of Conclusions and Recommendations**

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

### **General principles and the need for legislation**

**Recommendation 1.** We recommend that, where appropriate, a table of derivations should be included in Explanatory Memorandums of all future Bills. (Paragraph 36)

**Recommendation 2.** We recommend that the Bill includes an explicit reference to the United Nations Convention on the Rights of the Child. (Paragraph 38)

**Recommendation 3.** We recommend that the Assembly supports the general principles of the School Standards and Organisation (Wales) Bill. (Paragraph 39)

### **Part 2 – Standards**

#### ***Chapter 1 – Intervention in conduct of maintained schools***

##### ***Grounds for intervention***

**Recommendation 4.** We recommend that the statutory guidance on school intervention issued under section 20 sets out the criteria that will be used by local authorities and the Welsh Ministers to determine whether grounds for intervention exist; the information that will be used for the purpose of assessing those criteria; and how authorities will be expected to weight that information when making an assessment. (Paragraph 85)

##### ***Powers of intervention of local authorities and the Welsh Ministers in the conduct of maintained schools***

**Recommendation 5.** We recommend that the statutory guidance on school intervention provides clear advice on the circumstances in which these powers [in sections 9 and 17] may be used and the types

of directions it would be appropriate and/or reasonable to give in those circumstances. (Paragraph 107)

### ***Chapter 2 – Intervention in local authorities***

**Recommendation 6.** We recommend that the Minister provides guidance on intervention by the Welsh Ministers in local authorities, which includes further explanation on the meaning of the term “adequate” within ground 3. (Paragraph 123)

**Recommendation 7.** We recommend that the Explanatory Memorandum is amended to include a comprehensive explanation about the power in section 27 for the Welsh Ministers to direct exercise of other education functions, and the types of circumstances under which it could reasonably be used. (Paragraph 125)

**Recommendation 8.** We recommend that the Minister provides guidance to local authorities on intervention by the Welsh Ministers in local authorities, which includes an explanation about the power in section 27 and the types of circumstances under which it could be exercised. (Paragraph 126)

### ***Chapter 3 – School improvement guidance***

**Recommendation 9.** We recommend that section 34 is amended to require the Welsh Ministers to consult Her Majesty’s Inspectorate for Education and Training in Wales (or any future equivalent body) on the draft school improvement guidance. (Paragraph 167)

## **Part 3 – School organisation**

### ***Chapter 1 – Code on school organisation***

**Recommendation 10.** We recommend that section 39 is amended to include more detail about the types of persons to be consulted on the draft or revised School Organisation Code. (Paragraph 186)



## ***Chapter 2 – School organisation proposals***

**Recommendation 11.** We note the evidence received which questioned the weighting given to specific groups of objectors and, in some cases suggested changes to the categories, and we recommend that the Minister give consideration to this ahead of Stage 2. (Paragraph 257)

**Recommendation 12.** We recommend that the Bill is amended to ensure that the principle of independence [of Local Determination Panels - LDPs] is enshrined within the legislation. (Paragraph 266)

**Recommendation 13.** We further recommend that Schedule 3 is amended to give clear details as to how LDPs will operate in practice. (Paragraph 266)

**Recommendation 14.** We recommend that the Minister undertakes a review of the operation of LDPs at the earliest opportunity and reports back to the Committee. (Paragraph 267)

## **Part 4 – Welsh in Education Strategic Plans**

**Recommendation 15.** We recommend that, ahead of Stage 2, the Minister gives consideration to ensuring that the Bill provides for Welsh in Education Strategic Plans to contain local authorities’ proposals on how they will ensure that any increased demand for Welsh-Medium provision is adequately met. (Paragraph 319)

## **Part 5 – Miscellaneous schools functions**

### ***Free breakfasts in primary schools***

**Recommendation 16.** We recommend that the Minister considers including in guidance the circumstances in which a local authority can determine that the provision of a free school breakfast service is “unreasonable”. (Paragraph 349)

### ***Parents’ meetings***

**Recommendation 17.** We recommend that the Minister reviews the appropriateness of the numbers and percentages required to trigger the request for a parents’ meeting and considers the alternative suggestion of a sliding scale. (Paragraph 422)

## **Financial implications of the Bill**

### **Part 3 – School organisation**

#### ***Chapter 2 – School organisation proposals***

**Recommendation 18.** We recommend that when the Minister reviews and reports back [to the Committee] on the operation of LDPs, he also reports back [to the Committee] on the actual cost of LDPs. (Paragraph 453)

### **Part 4 – Welsh in Education Strategic Plans**

**Recommendation 19.** In Chapter 6, we recommend that the Minister gives consideration to including in the Bill provision to ensure that any increase in demand for Welsh medium education is adequately met. On the basis that the Minister accepts this recommendation, we further recommend that he must ensure that adequate funding is available for this purpose. (Paragraph 465)

# 1. Introduction

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## Background

1. On 23 April 2012, the Minister for Education and Skills, Leighton Andrews AM (“the Minister”), introduced the School Standards and Organisation (Wales) Bill<sup>1</sup> (“the Bill”) and made a statement in plenary the following day.<sup>2</sup>

2. At its meeting on 27 March 2012, the Assembly’s Business Committee agreed to refer the Bill to the Children and Young People Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 12 October 2012.

## Scope of the Committee’s scrutiny

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- i) the need for a Bill to make provision about school standards and school organisation;
- ii) whether the Bill achieves its stated purposes;
- iii) the key provisions set out in the Bill and whether they are appropriate to deliver its stated purposes;
- iv) potential barriers to the implementation of the key provisions and whether the Bill takes account of them;
- v) whether there are any unintended consequences arising from the Bill.

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<sup>1</sup> School Standards and Organisation (Wales) Bill, available at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=3633>

<sup>2</sup> ROP, 24 April 2012, available at: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=232892&ds=4%2F2012#dat4>

(NB: unless otherwise stated, subsequent references in this report to ROP refer to the proceedings of the Children and Young People Committee)

## **The Committee's approach to evidence gathering**

4. The Committee consulted widely, issuing an open call for evidence through the Welsh media and the Assembly's website, and invited key organisations with a subject area interest to submit written evidence to inform our work. A list of those who submitted written evidence is available at the end of this report.
5. We also took oral evidence from a number of witnesses; further details are attached at the end of this report.
6. In addition, on behalf of the Committee, the Assembly's External Communications Outreach Team held focus groups with parents and governors to seek their views on the Bill. Further information about these groups and a summary of their respective contributions is available on the Assembly's website.
7. In reporting on the Bill, we have taken account of the views of all those who gave evidence to the Committee and have sought to reflect the key issues raised in evidence.
8. The Committee is grateful to all those who provided evidence. Their contribution throughout consideration of the Bill has been invaluable.
9. The following report details the conclusions and recommendations the Committee has reached based on the evidence received during the course of its work.

## **2. Background**

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### **The Assembly's legislative competence to make the Bill**

10. The principal powers enabling the Assembly to make a Bill in relation to school standards and organisation are contained in subject 5 (education and training) and subject 9 (health and health services) of Schedule 7 of the Government of Wales Act 2006 ("GoWA 2006").

11. The Bill is divided into six parts:

- Part 1 - Introduction;
- Part 2 - Standards, including intervention in schools causing concern and school improvement guidance;
- Part 3 - School organisation, including the code on school organisation, rationalisation of school places, regional provision for special educational needs and proposals for restructuring sixth form education;
- Part 4 - Welsh in education strategic plans;
- Part 5 - Miscellaneous school functions, including free school breakfasts, power to charge for meals, school-based counselling and parents' meetings;
- Part 6 - General.

### **Policy objectives of the Bill**

12. With regard to intervention in schools causing concern, the Explanatory Memorandum<sup>3</sup> accompanying the Bill states that:

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;

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<sup>3</sup> Welsh Government, Explanatory Memorandum, available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=232782&ds=4/2012>

- 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.<sup>4</sup>

13. It goes on:

In addition to this the Bill sets out to strengthen and reform those powers of intervention where necessary.<sup>5</sup>

14. In relation to the school improvement guidance, the Explanatory Memorandum states that the Welsh Government is 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.<sup>6</sup>

15. It adds:

The purpose of the school improvement guidance [sections] in this Bill would be to place such guidance on a statutory basis.<sup>7</sup>

16. With regard to Part 3 of the Bill, the Explanatory Memorandum states:

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.<sup>8</sup>

17. The Explanatory Memorandum goes on to say that the arrangements proposed in the Bill “will ensure that the vast majority of

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<sup>4</sup> EM 3.13 pg11

<sup>5</sup> EM 3.14 pg11

<sup>6</sup> EM 3.30 pg15

<sup>7</sup> ibid

<sup>8</sup> EM 3.54 pg19

proposals are determined at the local level and in many instances the process should be swifter.”<sup>9</sup>

18. In relation to the Welsh in Education Strategic Plans (WESPs), the Explanatory Memorandum notes:

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.<sup>10</sup>

19. With regard to parents’ meetings, the Explanatory Memorandum states that the Welsh Government “has carefully considered the position of Annual Parents’ Meetings” and it is “important that these meetings are timely and sought after by parents”.<sup>11</sup>

20. It goes on to say that the Bill proposes:

- 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.<sup>12</sup>

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<sup>9</sup> EM 3.54 pg19

<sup>10</sup> EM 3.73 pg23

<sup>11</sup> EM 3.92 pg26

<sup>12</sup> *ibid*

21. In relation to the other aspects of Part 5 of the Bill, namely free school breakfasts, power to charge for meals and school-based counselling, the Explanatory Memorandum states:

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)... 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.<sup>13</sup>

22. It further states:

...the Bill makes provision to give local authorities flexibility over the pricing of school meals. In addition the [Education Act 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.<sup>14</sup>

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<sup>13</sup> EM 3.99 pg27

<sup>14</sup> EM 3.113 pg31



### **3. General principles and the need for legislation**

#### *Evidence from respondents*

23. There were varying levels of support in evidence for the Bill. The majority of respondents broadly supported the general principles of the Bill. Reasons given in support centred mainly on the need to consolidate and clarify existing legislation on intervention, and to streamline and simplify school organisation procedures.

24. Governors Wales welcomed the Bill and suggested it would “assist in improving overall school standards and to reduce bureaucracy”, and “streamline, simplify and reform statutory existing processes”.<sup>15</sup>

25. In supporting the need for the Bill, Estyn stated:

We believe that the Bill addresses many issues concerning standards and school organisation, especially with regard to spreading best practice, promoting more efficient ways of working and reducing the effect of child poverty.<sup>16</sup>

26. Both the Children’s Commissioner for Wales and Children in Wales expressed disappointment that neither the Bill nor Explanatory Memorandum included reference to the United Nations Convention on the Rights of the Child (UNCRC).<sup>17</sup> The Children’s Commissioner for Wales stated:

It seems to me that a rights-based approach in relation to school standards is essential, and we have the Rights of Children and Young Persons (Wales) Measure 2011, which provides a framework within which Ministers can pay due regard to the UNCRC. So, I am disappointed not to see that in here. I do not in any way mean to say that I do not think that Ministers take account of the UNCRC. I know that they do. However, I would like it to be more explicit in relation to the Bill.<sup>18</sup>

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<sup>15</sup> Written evidence SSO10

<sup>16</sup> Written evidence SSO2

<sup>17</sup> Written evidence SSO25, RoP, paragraphs 7 to 11, 11 July 2012, Written evidence SSO23

<sup>18</sup> RoP, paragraphs 7 to 11, 11 July 2012

27. While supporting the need for the Bill, Barnardo’s Cymru raised concern about “the lack of reference and apparent consideration given to pupil and parent voice and engagement.”<sup>19</sup>

28. No respondent directly opposed the Bill. However, it was apparent that some of the teaching unions, namely NUT Cymru and NASUWT Cymru were less supportive of the Bill than respondents more generally.<sup>20</sup>

29. In evidence, NUT Cymru stated:

There are aspects within the proposed Bill that are welcomed and acceptable, such as support for Welsh language schemes, proposals around free school breakfasts...However, there are also elements that we are very much opposed to, such as linking intervention to school banding.<sup>21</sup>

30. The NASUWT Cymru acknowledged that “the proposal to introduce a Bill to make provision about school standards and school organisation has merit”. It went on to question the assertions made by the Minister about existing standards in schools in Wales and to raise concern about the general approach adopted in the Bill to school improvement.<sup>22</sup>

31. Regardless of their overall stance, most respondents raised concern about one or more areas of the Bill. These will be considered later in the report under the Part of the Bill to which they relate.

### ***Evidence from the Minister***

32. According to the Explanatory Memorandum, the School Standards and Organisation (Wales) Bill will:

- provide a clearer process for school intervention with the aim of driving up school improvement through the introduction of statutory guidance;
- reform the statutory process for school organisation so that decisions are taken locally wherever possible;

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<sup>19</sup> Written evidence SSO22

<sup>20</sup> Written evidence SSO6 and SSO7

<sup>21</sup> Written evidence SSO6

<sup>22</sup> Written evidence SSO7

- remove the requirement for School Governing Bodies to hold Annual Parents' Meetings and introduce a new right for parents to call meetings with School Governing Bodies;
- give local authorities and schools greater flexibility over the pricing of school meals;
- mainstream several grant-funded programmes to help streamline current processes; and
- make local authorities accountable for planning Welsh-medium provision by making Welsh in Education Strategic Plans statutory.<sup>23</sup>

33. In commenting on the lack of reference to the UNCRC in the Bill, the Minister asserted he was "clear about how the Bill fits with the demands of the UNCRC". He went on to state:

We have in any case a duty to comply with the UNCRC, so I am not sure that adding it to the Bill would actually change our obligations in any regard. However, if that is an issue that the committee would like to press, I would be relaxed about that.<sup>24</sup>

### ***Our view***

34. We acknowledge the general support in evidence for the School Standards and Organisation (Wales) Bill and recognise that no respondent opposed the Bill. We note that, in the main, Part 2 of the Bill consolidates and seeks to clarify existing legislation on intervention. We recognise the benefit of bringing together the law on intervention not only to ensure clarity for and consistency across local authorities, but to promote greater understanding of the process of intervention within the education sector and the wider school community.

35. Similarly, we acknowledge that Part 3 of the Bill brings together existing legislation on school organisation, albeit with some significant reforms. We recognise, and in some cases, echo the concern raised in evidence about some of the provisions within this Part, and our views on this are set out in more detail in Chapter 5 of this report. However,

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<sup>23</sup> EM 1.1 pg7

<sup>24</sup> RoP, paragraph 105, 19 July 2012

on balance, we are content with the purpose and aim of Part 3 of the Bill.

36. Given that many of the provisions in Parts 2 and 3 are consolidating in nature it would have been helpful as an aid to scrutiny if a table of derivations, setting out the sources of the legislation proposed to be consolidated in the Bill had been included in the Explanatory Memorandum. We acknowledge that this information was provided by the Minister to the Chair of the Constitutional and Legislative Affairs Committee part way through the Stage 1 scrutiny process. **We recommend that, where appropriate, a table of derivations should be included in the Explanatory Memorandum of all future Bills.**

37. We note the broad support in evidence for Part 4 on Welsh Education Strategic Plans (WESPs) and Part 5, which includes provision for free school breakfasts, school-based counselling and flexible charging for school meals, and parents' meetings. We recognise that, in the main, these Parts of the Bill place existing non-statutory provision on a statutory footing either with the aim of strengthening existing arrangements or, in the case of free school breakfasts and school based counselling to ensure the continuation of provision following the transfer of funding from the specific grant to the Revenue Support Grant. As such, we are generally content with Parts 4 and 5 of the Bill.

38. We acknowledge the evidence received from the Children's Commissioner for Wales and others about the lack of reference in the Bill to the UNCRC. We recognise that the Welsh Ministers are under a duty to have regard to the UNCRC when making decisions about provisions proposed to be included in legislation and note the Minister's evidence on this issue. However, in order to actively demonstrate the Welsh Government's commitment to the agenda on the rights of children and young persons, and for the sake of absolute clarity, **we recommend that the Bill includes an explicit reference to the UNCRC.**

39. In view of the evidence from respondents and the Minister, **we recommend that the Assembly supports the general principles of the School Standards and Organisation (Wales) Bill.**

## **4. Part 2 - Standards**

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### **Background**

40. Part 2 of the Bill:

- reforms the existing law in respect of intervention by local authorities and Welsh Ministers in the conduct of schools maintained by local authorities, and on intervention by Welsh Ministers in the exercise of education functions by local authorities; and
- provides for the Welsh Ministers to issue statutory school improvement guidance to head teachers, governing bodies and local authorities about how to exercise their functions so as to improve standards of education.

### **Chapter 1 – Intervention in conduct of maintained schools**

#### **Existing legislation on intervention**

##### ***Background***

41. The existing power of local authorities and the Welsh Ministers to intervene in schools causing concern is set out in the School Standards and Framework Act 1998 (“the SSFA”) and the Education Act 1996.

42. Chapter 1 reforms the existing legislation in respect of intervention by local authorities and the Welsh Ministers in the conduct of schools maintained by authorities. It brings together all the powers of intervention for both local authorities and Welsh Ministers and provides them with the same grounds for intervention. The powers of intervention are also strengthened and reformed.

##### ***Evidence from respondents***

43. There was broad support in evidence for Chapter 1 and the move to consolidate and clarify existing legislation in intervention.

44. In oral evidence to the Committee, the WLGA and ADEW suggested that “there is some ambiguity and confusion” in relation to the existing legislation.<sup>25</sup> They stated:

Consolidating existing legislation outlined in Chapter 1 of the Bill is welcomed by local authorities as it provides a clear framework for intervention in schools and will enable local authorities to support schools causing concern in an appropriate and timely manner.<sup>26</sup>

45. Similar views were expressed by Governors Wales.<sup>27</sup>

46. Representatives of local government suggested that the Bill will provide an improved understanding of intervention within local authorities, schools and other interested parties.<sup>28</sup>

47. In commenting on the use of the current powers of intervention by local authorities, Estyn stated:

To date, too few local authorities have used their powers to intervene. The proposed clarification of the position should greatly help local authorities to address more challenging schools.<sup>29</sup>

48. Notwithstanding the broad support for the consolidation and clarification of existing legislation in the Bill, concerns were raised about the breadth of the grounds for intervention and the extent of the powers of intervention provided. These issues will be addressed later in the report.

49. A number of respondents suggested that factors other than the complexity of existing legislation impacted on the ability and/or willingness of authorities to intervene in schools causing concern. These factors included:

- lack of effective monitoring of schools’ performance by authorities;

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<sup>25</sup> RoP, paragraph 260, 31 May 2012

<sup>26</sup> Written evidence SSO3

<sup>27</sup> Written evidence SSO10

<sup>28</sup> RoP, paragraph 264, 31 May 2012, Written evidence SSO26

<sup>29</sup> Written evidence SSO2

- lack of capacity and expertise in authorities to undertake effective interventions; and
- the unwillingness of authorities to jeopardise working relationships with schools.

50. In oral evidence, Estyn explained that inspections of local authorities' school improvement services had found five out of eleven authorities that had been inspected to be "adequate" or "unsatisfactory". It stated:

It may be that officers are reluctant to intervene except in extreme circumstances. They may wait for inspections of schools to come along before taking action on low performance. With some officers, there may be issues of capacity or capability. Some officers may not know their schools well enough.<sup>30</sup>

51. Linked to the above, NAHT Cymru and ASCL stated:

...if there has been a lack of intervention, perhaps that is not just because of a lack of clarity....other factors are responsible for it, such as capacity or the willingness to do it. So, in introducing this Bill, we will not necessarily resolve some of the more structural problems in the system that have meant that there has not been appropriate intervention in the past.<sup>31</sup>

52. NUT Cymru asserted that the capacity of authorities to intervene in schools was "a real problem" and that, as such, an authority's power of intervention could be seen to be "an empty threat."<sup>32</sup> It also suggested that authorities no longer have the capacity to effectively monitor schools' performance and that, without the necessary degree of knowledge, authorities may be reluctant to intervene where problems exist.<sup>33</sup>

53. The role of the regional school improvement consortia in tackling the perceived lack of capacity and expertise in local authorities was raised by several respondents. While some felt that the consortia would help address these issues, others, in particular the teaching

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<sup>30</sup> RoP, paragraphs 172 to 173, 31 May 2012

<sup>31</sup> RoP, paragraph 23, 13 June 2012

<sup>32</sup> RoP, paragraph 235, 27 June 2012, Written evidence SSO6

<sup>33</sup> RoP, paragraph 247, 27 June 2012

unions were less positive about the potential impact the consortia would have on the school improvement agenda.

54. On a separate point, NUT Cymru stated:

...no consideration seems to have been given to why local authorities have rarely used their existing powers of intervention, other than potential “confusion”...It may be, as has been shown to be the case in England that local authorities may choose not to use them because of the damage intervention powers may cause to their relationships with an individual school.<sup>34</sup>

55. It was clear from their evidence that NUT Cymru and NASUWT Cymru had fundamental concerns about the use of intervention as a means of improving standards in schools and the use of the national banding system to assess whether the grounds for intervention exist. NASUWT Cymru felt strongly that a more supportive approach to school improvement was required and that such an approach would be more effective in raising standards.<sup>35</sup>

### ***Evidence from the Minister***

56. One of the main arguments put forward by the Minister in the Explanatory Memorandum and in oral evidence for Chapter 1 is that local authorities are not using their existing powers of intervention at an early enough stage to address underperformance within schools.

57. According to the Explanatory Memorandum, this issue was underlined by Estyn’s Annual Report for 2010/11, which in turn supported the findings of its evaluation of the impact of local authority intervention and support for schools causing concern undertaken in 2009.

58. On this point, the Minister stated:

...local authorities themselves do not always understand the process [of intervention] or feel that they have sufficient clarity over whether they should intervene. Given the challenges that we face in respect of school improvement, I think that earlier

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<sup>34</sup> Written evidence SSO6

<sup>35</sup> Written evidence SSO7



intervention by local authorities would be more helpful. The process of going through discussions with local authorities, now that we have the school standards unit in place, demonstrates the lack of understanding that existed previously.<sup>36</sup>

59. The Minister explained that, currently there are no specific systems in place to monitor the issuing of warning notices (usually the start of the intervention process) by local authorities or the use and effectiveness of authorities' powers of intervention. However, he went on to report his intention to "review the legislation annually to see the impact that it is having on the ground".<sup>37</sup>

60. In responding to the evidence that factors other than the complexity of existing legislation may impact on intervention, the Minister stated:

I think that they are less likely to have an impact in future because of the move to reorganise school improvement services on a regional basis.<sup>38</sup>

61. He went on to acknowledge that some local authorities "have not really provided the level of challenge to schools facing difficulty that we might have expected them to under existing legislation and their existing responsibilities".<sup>39</sup> Again, the Minister believed that the establishment of the regional school improvement consortia would address this issue.

### ***Our view***

62. We note the evidence received about the apparent reluctance of local authorities to intervene in schools causing concern using their existing powers of intervention under the School Standards and Framework Act 1998. We note the evidence from the Minister and representatives of local government that one of the reasons for this reluctance is the complexity of existing legislation. In view of this, we accept the move to consolidate and clarify the existing legislation on intervention within the Bill.

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<sup>36</sup> RoP, paragraph 9, 9 May 2012

<sup>37</sup> RoP, paragraph 109, 19 July 2012

<sup>38</sup> RoP, paragraph 111, 19 July 2012

<sup>39</sup> *ibid*

63. Notwithstanding the above, we acknowledge the suggestion that factors other than the complexity of existing legislation may affect an authority's decision to intervene. We understand that the regional school improvement consortia, which are soon to be formally established, are a new development and, as such, there is no evidence on their past performance to draw on. However, we recognise that the aim of the consortia is to monitor, support and challenge schools with a view to improving performance. With this in mind, and in view of the Minister's evidence, we expect that, once fully operational, they will help address any wider issues that may prevent authorities from intervening in schools where problems exist.

## **Grounds for intervention**

### ***Background***

64. Section 2 sets out the eight grounds for intervention by local authorities and the Welsh Ministers in the conduct of maintained schools. These replace the existing grounds contained in the SSFA, with amendments. In addition, grounds 5 and 6 are based on the Welsh Ministers' powers of intervention contained in the Education Act 1996.

### ***Evidence from respondents***

65. The views on the grounds for intervention (section 2) varied. Some respondents were content with the grounds and suggested they provided greater clarity about when local authorities and the Welsh Ministers could begin the process of intervention.

66. In commenting on the grounds, the WLGA and ADEW stated:

The grounds for intervention as stated in Chapter 1, section 2 provide clarity for local authorities regarding the circumstances in which they can intervene in a school, and the amendments to the legislation which will allow local authorities to intervene in schools where the governing body fail to comply with a duty or due to its unreasonable action, are welcomed by local authorities.<sup>40</sup>

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<sup>40</sup> Written evidence SS03

67. Similarly, Estyn welcomed the changes made to the grounds, in particular ground 1, which it believed was “much more helpful than the previous version”.<sup>41</sup>

68. ATL Cymru believed the grounds were “clearly stated in the main and clarify and tighten existing legislation”. However, it went on to outline a number of specific concerns in relation to grounds 1 to 3.<sup>42</sup>

69. Some of the teaching unions raised concern that the grounds may be open to wide-interpretation and, as such, could result in intervention when it is unnecessary or inappropriate.

70. In commenting on this issue, NUT Cymru stated:

...local authorities may intervene if performance is low when equated to pupils at comparable schools. The definition of a comparable school in the first instance is not clear. Grounds for intervention could easily be manipulated...A local authority could intervene in schools where it is inappropriate to do so based on some of the vague criteria provided.<sup>43</sup>

71. On a related note, and in commenting on ground 1, ATL Cymru stated:

The statement ‘the standards previously attained’ should not be taken literally to require automatic intervention in school. Intervention should only take place following suitable interrogation of data taking into consideration statistical variation and anomalies which may be due to cohort.<sup>44</sup>

72. The above was echoed by NAHT Cymru and ASCL who also questioned the use of the terms “in all circumstances” and “where statistically relevant”.<sup>45</sup>

73. Serious concern was raised by a number of the teaching unions about the use of the national banding system as a means of assessing whether ground 1 exists. It was clear that some unions strongly oppose banding in principle.

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<sup>41</sup> RoP, paragraph 188, 31 May 2012

<sup>42</sup> Written evidence SSO8

<sup>43</sup> Written evidence SSO6

<sup>44</sup> Written evidence SSO8

<sup>45</sup> Written evidence SSO4 and RoP, paragraphs 50 to 56, 13 June 2012

74. In commenting on the use of performance data to assess whether grounds for intervention exist, Estyn emphasised the value of the All Wales Core Data Set in providing a consistent platform on which to analyse data and identify potential underperformance.<sup>46</sup>

75. In addition, Governors Wales suggested it would be important to ensure that the full range of activities within schools aimed at improving the learning and well-being of pupils are taken into account when making an assessment.<sup>47</sup>

76. In relation to ground 2, UCAC stated it was “dangerously open ended” and “does not set down any kind of threshold in terms of the level of seriousness that would trigger intervention in the schools.”<sup>48</sup> On a similar note, ATL Cymru suggested that further clarity was required on how an assessment that “a breakdown in the way the school is managed or governed” would be made.<sup>49</sup>

77. Some of the teaching unions questioned whether it was appropriate in ground 3 to use the behaviour of parents as a basis for intervention, given that this was a factor outside the control of the school.<sup>50</sup> In addition, clarification was sought on the meaning of the term “severely prejudicing” within this context and the criteria which would be used for the purpose of determining whether ground 3 existed.<sup>51</sup>

### ***Evidence from the Minister***

78. According to the Explanatory Memorandum:

If local authorities are to be timely and effective in their intervention it must be clear what the grounds for such intervention are. Therefore the Bill will restate and remove unnecessary over complication of the grounds.<sup>52</sup>

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<sup>46</sup> RoP, paragraph 199, 31 May 2012

<sup>47</sup> Written evidence SSO10

<sup>48</sup> Written evidence SSO9

<sup>49</sup> Written evidence SSO8

<sup>50</sup> Written evidence SSO4 and SSO8

<sup>51</sup> Written evidence SSO8

<sup>52</sup> EM 3.17 pg 12

79. More specific detail on changes made to the existing grounds and the rationale for those changes can be found in the Minister’s letter to the Committee dated 24 May 2012.

80. In oral evidence, the Minister explained that local authorities would be expected to identify concerns through Estyn inspection reports or in undertaking their routine school improvement responsibilities. He went on to emphasise that authorities would be expected to take account of a wide range of data when determining whether the grounds for intervention exist.<sup>53</sup>

81. In commenting on concerns that the grounds were too open-ended, the Minister explained that he had “deliberately kept the detail for statutory guidance”. He also emphasised:

[local authorities] have to operate within a wider legal framework, where they can be challenged in the courts. So, they will want to be very clear themselves about how this will work.<sup>54</sup>

82. In responding to a question about the criteria that will be used to assess ground 2, the Minister provided several examples of the types of information that he would expect to be used to justify a warning notice. These included self-evaluation reports, evidence as to a school’s achievement of targets for value for money and capacity to improve, Estyn reports and data trends.<sup>55</sup>

83. In providing justification for ground 3, the Minister explained that this ground existed under the SSFA. In addition, he stated:

A governing body clearly has a duty to maintain discipline in a school, and the local authority has the responsibility for the safety of staff and pupils. If you had a situation in which the behaviour of parents was having a detrimental effect on educational standards or was compromising safety, you would expect the local authority to intervene.<sup>56</sup>

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<sup>53</sup> RoP, paragraph 114, 19 July 2012

<sup>54</sup> *ibid*

<sup>55</sup> RoP, paragraph 116, 19 July 2012

<sup>56</sup> RoP, paragraph 118, 19 July 2012

### *Our view*

84. We note the varied views expressed in evidence on the grounds for intervention provided in section 2. We welcome the Minister's intention to remove the ambiguity and confusion around the current grounds with the aim of ensuring that local authorities are able to intervene in schools causing concern at an early stage. However, while we support the Minister's intention, it is clear from the evidence received that confusion also exists around the new grounds, in particular about the meaning of terms within the grounds, and about how local authorities and the Welsh Ministers will determine whether the grounds exist.

85. We believe it is important to ensure that interested parties, including local authorities, governing bodies and the wider school community, including pupils, understand fully the grounds for intervention. We acknowledge the Minister's evidence that the detail in relation to the grounds will be included in guidance and we welcome this. Following on from this, **we recommend that the statutory guidance on school intervention issued under section 20 sets out the criteria that will be used by local authorities and the Welsh Ministers to determine whether grounds for intervention exist; the information that will be used for the purpose of assessing those criteria; and how authorities will be expected to weight that information when making an assessment.**

### **Powers of intervention of local authorities and the Welsh Ministers in the conduct of maintained schools**

#### ***Background***

86. Chapter 1 provides powers to local authorities and the Welsh Ministers to intervene in the conduct of maintained schools. These powers largely replace existing powers contained in the SSFA and streamline the powers available to authorities and the Welsh Ministers. A new power for authorities to require a governing body to secure advice or collaborate is also provided.

### ***Evidence from respondents***

87. As previously mentioned, there was broad support in evidence for bringing together the powers of intervention, as provided for in Chapter 1.

88. The WLGA and ADEW stated:

...the Bill make[s] the powers of local authorities clearer, for both the authorities and schools, and provide[s] a statutory framework which supports local authorities to fulfil their duties regarding schools causing concern.<sup>57</sup>

89. Governors Wales believed that the consolidation of powers is a “sensible way forward”.<sup>58</sup>

90. Few detailed comments were received on the powers of intervention set out in sections 5 to 17 of the Bill.

91. The Church in Wales Education Department felt that the power to appoint additional governors (section 6) may undermine the role of the Diocese in ensuring that governors uphold the character and ethos of schools with a religious character.<sup>59</sup>

92. Linked to this, the Charity Commission for England and Wales raised concern that the use of the powers of intervention to direct governing bodies with charitable status, in certain circumstances “would not seem within the spirit of respecting charities’ independence”.<sup>60</sup>

93. On the issue of directions, UCAC raised concern about the extent of the powers of local authorities and the Welsh Ministers to “give directions to the governing body or head teacher” and “take any other steps” for the purpose of dealing with the grounds for intervention (sections 9 and 17). It questioned whether sufficient safeguards are in place to ensure that the powers are exercised appropriately and are subject to adequate levels of scrutiny.<sup>61</sup>

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<sup>57</sup> Written evidence SSO3

<sup>58</sup> Written evidence SSO10

<sup>59</sup> Written evidence SSO24

<sup>60</sup> Written evidence SSO18

<sup>61</sup> Written evidence SSO9 and RoP, paragraph 20, 27 June 2012

94. In relation to the power of the Welsh Ministers to direct federation of schools (section 15), UCAC questioned whether a school would have a right to refuse to federate with a school causing concern that was subject to a direction under section 15.<sup>62</sup>

95. In addition, UCAC strongly opposed the power of the Welsh Ministers to direct closure of a school (section 16) on the basis that it was “unreasonably extreme”. It suggested that, once the threat of closure exists “staff will start to look for jobs elsewhere and parents will move their children to other schools”, which may further compromise standards. As such, UCAC stated:

There is a risk therefore, that such legislation could undermine a school’s ability to improve standards.<sup>63</sup>

96. When asked whether the powers of intervention provided in Chapter 1 are appropriate, NUT Cymru stated:

...it would depend on the basis on which the decision [to intervene] was taken. If it was taken on the basis of data that are not entirely reliable, there is an issue there.<sup>64</sup>

97. In commenting on local authorities’ new power to require governing bodies to secure advice or collaborate provided in section 5, NUT Cymru stated:

Unless the Welsh Government or local government is willing to provide funds to ensure people are able to collaborate, collaboration, on any basis, will be difficult.<sup>65</sup>

98. NAHT Cymru and ASCL sought clarification on the circumstances under which the Welsh Ministers are able to exercise their powers of intervention (section 11) and suggested that reference should be made to the criteria upon which the Ministers would base their judgement.<sup>66</sup> In oral evidence, they went on to suggest that they would be content for this to be covered in guidance.<sup>67</sup>

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<sup>62</sup> Written evidence SSO9

<sup>63</sup> RoP, paragraph 32, 27 June 2012

<sup>64</sup> RoP, paragraph 261, 27 June 2012

<sup>65</sup> *ibid*

<sup>66</sup> Written evidence SSO4 and RoP, paragraphs 73 to 80, 13 June 2012

<sup>67</sup> RoP, paragraphs 73 to 78, 13 June 2012



99. NAHT Cymru and ASCL questioned whether schools should have a right of appeal if they believe local authorities or the Welsh Ministers have “acted unreasonably” in exercising their powers of intervention.<sup>68</sup> Similar views were shared by Governors Wales.<sup>69</sup>

100. A number of respondents, including the Children’s Commissioner for Wales emphasised the importance of keeping pupils and their parents fully informed either when there was a threat of intervention or when intervention had taken place.<sup>70</sup>

### ***Evidence from the Minister***

101. In his letter to the Committee, the Minister explained that, under the SSFA, local authorities “only have fairly draconian powers [of intervention]”. In contrast, under the Education Act 1996 the Welsh Ministers have general power to give directions to governing bodies where they are satisfied that the governing body has acted, or is proposing to act, unreasonably or has failed to discharge a duty.

102. The Minister went on to explain that under the Bill local authorities would retain their existing powers and have additional powers to give directions to governing bodies, and to require governing bodies to secure advice or collaborate.

103. The Minister stated:

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.<sup>71</sup>

104. In oral evidence, the Minister asserted:

The important thing about all of this provision is that a range of interventions may be appropriate, so we want to maintain flexibility for local authorities. When we bring together powers of intervention, people will focus on the powers of the Welsh Ministers, because they are seen as rather more draconian and

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<sup>68</sup> Written evidence SSO4

<sup>69</sup> Written evidence SSO10

<sup>70</sup> Written evidence SSO9, SSO22 and SSO25, RoP, paragraphs 16 to 17, 11 July 2012

<sup>71</sup> Additional evidence – letter from the Minister, 24 May 2012

centralist. However, to put it bluntly, those are backstop powers and it is pretty rare for them to be used. We are actually interested in local authorities carrying out their responsibilities.<sup>72</sup>

105. It was clear from the Minister's evidence that he did not believe it was appropriate or necessary for the Bill to include a right of appeal for schools.<sup>73</sup>

### *Our view*

106. We acknowledge that the powers of intervention set out in Chapter 1 largely restate existing powers available to local authorities and the Welsh Ministers in the School Standards and Framework Act 1998 and the Education Act 1996. We accept the need to ensure that authorities and the Ministers have the necessary range of powers to enable them to intervene effectively in schools causing concern. As such, we are generally content with the powers of intervention provided.

107. We recognise the concerns raised in evidence about the general power of local authorities and the Welsh Ministers to give directions and take steps provided in sections 9 and 17. We note that this is a new power for local authorities and is an extension of the Welsh Ministers' existing power under sections 496 and 497 of the Education Act 1996. We accept that authorities and Ministers would be governed by the need to act reasonably in exercising the general power. However, in view of the evidence received, **we recommend that the statutory guidance on school intervention provides clear advice on the circumstances in which these powers may be used and the types of directions it would be appropriate and/or reasonable to give in those circumstances.**

108. We acknowledge there was some opposition to the powers in section 16 for the Welsh Ministers to direct school closure. We note that this power replaces the existing power in the School Standards and Framework Act 1998. We further note that the power to direct school closure only applies to ground 8, ie. when a school is subject to

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<sup>72</sup> RoP, paragraph 24, 9 May 2012

<sup>73</sup> RoP, paragraph 120, 19 July 2012

special measures and, as such would be exercisable only in extreme cases.

109. We note the Minister’s evidence that the powers of direction provided in the Bill, including the power to direct closure of a school, would be rarely exercised. We acknowledge that the existing power to direct closure of schools has not previously been used and we assume that this position will not change under the Bill unless there is an absolute need. To this end, we agree it is reasonable for the Welsh Ministers to retain this power and, as such, are content with section 16.

## **Chapter 2 – Intervention in local authorities**

### ***Background***

110. Chapter 2 sets out the circumstances in which the Welsh Ministers can intervene in the way a local authority is exercising its education functions and provides intervention powers to the Welsh Ministers.

### ***Evidence from respondents***

111. Few respondents commented on Chapter 2. Those that did broadly supported the provisions.

112. In welcoming Chapter 2, the WLGA and ADEW stated:

[it] provides local authorities with clarity regarding the circumstances in which a Welsh Minister may intervene in the education of a local authority. It is useful that existing powers have been consolidated into a single piece of legislation.<sup>74</sup>

113. In commenting on the appropriateness of the Welsh Ministers’ power of intervention in local authorities, the WLGA and ADEW explained that, in principle they “accepted” the need for the powers but went on to state:

...we will have a lot of interest in discussions about how the guidance will be developed. I would expect the Ministers to use

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<sup>74</sup> Written evidence SSO3

these powers only in exceptional cases and not on a daily or regular basis.<sup>75</sup>

114. In welcoming the powers for the Welsh Ministers to intervene in local authorities, ATL Cymru stated:

The ethos of the Bill is a restorative approach to address what many judge to have been systematic under-performance in local authorities, especially in regard to their lack of challenge and support.<sup>76</sup>

115. Some of the teaching unions sought clarification on the meaning of the term “an adequate standard” in ground 3 of the grounds for intervention (section 21).<sup>77</sup> ATL Cymru stated:

The subjective description of ‘an adequate standard’ to define the requirement for intervention is unsuitable. To ensure transparency and clear objectivity it will be necessary for criteria to be expanded upon.<sup>78</sup>

116. UCAC raised concern about the extent of the power under section 27, which would enable the Welsh Ministers to direct persons appointed to carry out an authority’s education functions to which the power of intervention related to also perform other education functions. It stated:

We are worried that this [section] is much too open-ended in terms of the power it gives to Welsh Ministers; in essence, it allows the people appointed by the Ministers to carry out education functions to undertake *any* aspect of those functions, functions that could extend far beyond the ‘grounds for intervention’ identified in the [warning] notice. We believe that the ambit of the powers should have been more clearly defined.<sup>79</sup>

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<sup>75</sup> Written evidence, SSO3, RoP, paragraph 288, 31 May 2012

<sup>76</sup> Written evidence SSO8

<sup>77</sup> Written evidence SSO4 and SSO8

<sup>78</sup> Written evidence SSO8

<sup>79</sup> Written evidence SSO9

### ***Evidence from the Minister***

117. The Minister explained that the Welsh Ministers' powers of intervention in local authorities provided for in the Bill were essentially a restatement of existing powers under the Education Act 1996. He reported that powers of intervention in local authorities are rarely exercised and that they were "essentially a backstop power".<sup>80</sup>

118. The Minister advised that the grounds for intervention set out in section 21 were the same as those provided for in the Education Act 1996. He went on to explain that "the full range of qualitative and quantitative data" would be used to assess whether grounds for intervention exist.<sup>81</sup>

119. In commenting on the meaning of the term "adequate" in ground 3, he asserted that the term had "been defined for Estyn reports, but it has also been defined in legislation". The Minister stated:

There is an understanding that it means that an authority is not necessarily failing but is borderline in the level and quality of the service that it is giving to pupils and parents.<sup>82</sup>

### ***Our view***

120. As with Chapter 1, we acknowledge that the powers of the Welsh Ministers to intervene in the exercise of education functions by a local authority set out in Chapter 2 largely restate existing powers under the Education Act 1996. We recognise the need to ensure that Ministers have the power to intervene when authorities are failing to carry out effectively their education functions. We acknowledge the Minister's evidence that these powers are intended only to be used in exceptional circumstances. As such, we are generally content with the powers of intervention provided.

121. Notwithstanding the above, we acknowledge the concern raised in evidence about the meaning of the term "adequate" within the grounds for intervention provided in section 21.

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<sup>80</sup> RoP, paragraph 33, 9 May 2012

<sup>81</sup> RoP, paragraph 123, 19 July 2012

<sup>82</sup> RoP, paragraph 125, 19 July 2012

122. We accept that the grounds provided in the Bill replace the existing grounds provided in the Education Act 1996 and note the Minister’s suggestion that the meaning of the term “adequate” is already widely understood. However, we believe it is important to ensure that local authorities and other interested parties have absolute clarity on this issue.

123. As such, **we recommend that the Minister provides guidance on intervention by the Welsh Ministers in local authorities, which includes further explanation on the meaning of the term “adequate” within ground 3.**

124. We share the concern raised in evidence about the extent of the power in section 27 for the Welsh Ministers to direct exercise of any of the local authority’s education functions, and not just those to which the powers to intervene relate. While we accept this is not a new power, and acknowledge the rationale put forward by the Minister for the power, we believe further explanation is required about the circumstances in which this power could be used.

125. We note the lack of information contained in the Explanatory Memorandum on the powers of the Welsh Ministers to intervene in local authorities. On this basis and in view of the evidence received **we recommend that the Explanatory Memorandum is amended to include a comprehensive explanation about the power in section 27 for the Welsh Ministers to direct exercise of other education functions, and the types of circumstances under which it could reasonably be used.**

126. Following on from this, **we recommend that the Minister provides guidance to local authorities on intervention by the Welsh Ministers in local authorities, which includes an explanation about the power in section 27 and the types of circumstances under which it could be exercised.**

## **Chapter 3 – School improvement guidance**

### ***Background***

127. Chapter 3 provides for the Welsh Ministers to issue statutory school improvement guidance to “school authorities” about how to

exercise their functions so as to improve standards of education. It also sets out the procedure that the Welsh Ministers must follow before issuing school improvement guidance, including consultation and laying before the National Assembly.

128. In addition, it sets out the process an authority must follow if it wants to deviate from the guidance and provides a power for the Welsh Ministers to direct compliance with the guidance.

### ***Evidence from respondents***

129. The majority of those who commented supported the statutory school improvement guidance, in principle. Reasons given in support of statutory guidance were the need to ensure the spread of best practice in school improvement and to tackle inconsistencies in performance across schools.<sup>83</sup>

130. In commenting on the school improvement guidance, Estyn stated:

We agree that it is right that the proposals focus strongly on improving the dissemination and use of best practice. Our evidence shows that many schools achieve very well and these schools can provide useful models to others of what works best. Our new inspection arrangements identify where there is excellent practice and we provide descriptions of this practice in a new part of our website. The proposals here will complement what we are doing.<sup>84</sup>

131. In oral evidence, Estyn went on to emphasise the need for guidance to be placed on a statutory footing. It stated:

...our recent inspection of the use of the skills framework has proved to us that non-statutory guidance is not very effective. Therefore, in principle, we are very much in favour of having guidance that is statutory.<sup>85</sup>

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<sup>83</sup> Written evidence SSO2, SSO3, SSO5, SSO10, SSO13, SSO17, SSO19, SSO23, SSO25 and SSO26

<sup>84</sup> Written evidence SSO2

<sup>85</sup> RoP, paragraph 220, 31 May 2012

132. GL Education Group supported the introduction of statutory guidance and stated:

Where standards are variable, or where adoption of particular practices would be beneficial to schools, we expect Ministers' school improvement guidance to be a valuable tool.<sup>86</sup>

133. The children's charities believed that guidance should recognise the link between poverty and attainment and give this specific and separate attention.<sup>87</sup> The Children's Commissioner for Wales suggested that guidance should consider improving outcomes for vulnerable learners.<sup>88</sup>

134. The teaching unions took a cautious view on the statutory school improvement guidance. While the majority of the unions did not directly oppose the guidance, it was clear they had serious reservations about placing it on a statutory footing, and about how this would work in practice.

135. In responding to whether there is a need for statutory guidance, ATL Cymru stated:

...in certain circumstances, there would be a need to issue more statutory guidance to schools. Our concern would be that you could get a model where you are told that there is only one way to teach certain disciplines or areas. We think that that would impugn the integrity and professionalism of staff and would possibly not take full account of local contexts. We would rather see a suite of measures so that you tell schools, on numeracy, for example, that certain things are proved to have worked and have raised standards in similar schools. Schools could then choose which one they think is best.<sup>89</sup>

136. On a similar note, NAHT Cymru and ASCL stated:

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<sup>86</sup> Written evidence SSO17

<sup>87</sup> Written evidence SSO19 and 23

<sup>88</sup> Written evidence SSO25

<sup>89</sup> ROP, paragraph 48, 27 June 2012



We accept that there is an argument for preparing statutory school improvement guidance to be used in some cases.<sup>90</sup>

137. They went on to draw comparisons with the mandatory national literacy and numeracy strategies in England and explained that this approach had “led to an apparent but short term rise in standards but also led to unintended consequences.”<sup>91</sup> In expanding on this in oral evidence, NAHT Cymru and ASCL stated:

Ultimately, the fact that England concentrated so much on the strategies and pushing children through tests may have had an unfortunate effect on its Programme for International Student Assessment results. So, we want to ensure that introducing statutory guidance in schools is not a deadening thing and that it does not stop schools from continuing to make progress by using the strategies they currently have in place if they are going in the right direction.<sup>92</sup>

138. UCAC suggested that Chapter 3 on school improvement guidance was “perhaps the weakest section of the Bill, and the section where there is least clarity about intent.” It went on to state:

It is not entirely clear to us whether there will be one set of [guidance] or whether every set of [guidance] will be different for every school. There is something of a mismatch between the nature of this guidance – the memorandum suggests it would be a compilation of good practice and things that have worked in other schools – and the statutory basis. The two things do not sit together comfortably.<sup>93</sup>

139. Both NASUWT Cymru and NUT Cymru challenged the assertion made by the Minister in the Explanatory Memorandum that “some schools are reluctant to change their approaches” and that best practice does not spread sufficiently quickly.<sup>94</sup>

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<sup>90</sup> RoP, paragraph 102, 13 June 2012

<sup>91</sup> Written evidence SSO4

<sup>92</sup> RoP, paragraph 102, 13 June 2012

<sup>93</sup> RoP, paragraph 52, 27 June 2012

<sup>94</sup> Written evidence SSO6 and SSO7

140. NUT Cymru made clear it supported sharing best practice and acknowledged the positive impact this could have on improving school standards. It stated:

...sharing best practice is always welcomed by the teaching profession. It is important to improving standards and ensuring that teachers across Wales are aware of innovative and effective teaching practices, and that those practices are made available.<sup>95</sup>

141. However, NUT Cymru went on to raise serious concerns about placing school improvement guidance on a statutory footing. It asserted:

...we should not be seeking to force or foist certain elements of practice upon a school in a particular area if it does not suit that school.<sup>96</sup>

142. When questioned about whether it accepted the need for statutory guidance NUT Cymru stated:

Significant caveats would have to be placed on it and we would want some real input into how [the guidance] would be drawn up.<sup>97</sup>

143. NASUWT Cymru made clear it did not believe school improvement guidance should be placed on a statutory basis. It asserted that “regimenting pedagogic practice is a step too far”.<sup>98</sup>

144. Regardless of their stance on statutory guidance, respondents emphasised the need to ensure that it is sufficiently flexible to meet the differing needs of schools. It also came through strongly in evidence that guidance should not stifle creativity and innovation, particularly in schools that are performing well.

145. In commenting on the above issues, Estyn stated:

[guidance] will need to be based on recognised and effective best practice and to be flexible enough to allow any requirements to

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<sup>95</sup> Written evidence SSO6

<sup>96</sup> RoP, paragraph 296, 27 June 2012

<sup>97</sup> RoP, paragraph 308, 27 June 2012

<sup>98</sup> Written evidence SSO7

be matched to the particular needs and stage of development of a school. We agree that the proposals should allow schools with 'leading edge' practice to be able to continue to develop and innovate.<sup>99</sup>

146. Similarly, Governors Wales stated:

Whilst we endorse the guidance we hope that it will not be too prescriptive and will not inhibit teachers' own creativity and innovation. The guidance will also need to be flexible to cater for future needs.<sup>100</sup>

147. Other concerns raised in evidence centred on how school improvement guidance would "keep pace with the educational developments and trends".<sup>101</sup>

148. On this issue, Michael Imperato, Solicitor stated:

The educational landscape changes regularly. Such guidance will need to be updated and therefore consulted upon almost as a continuous process, particularly if it is going to include technical guidance on teaching and management techniques.<sup>102</sup>

149. Similarly, GL Education Group emphasised:

Inherently, best practice is not static: it should be constantly evolving, with teachers learning new approaches, developing their technique, adapting to new resources and technologies, and building on current best practice in order to improve educational outcomes over time.<sup>103</sup>

150. A number of respondents sought clarification on, or raised concern about how and by whom the guidance would be drawn up.

151. In commenting on the above, Michael Imperato questioned how easy it would be in practice for the Minister (and officials within the Department of Education and Skills) to draw up guidance that is

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<sup>99</sup> Written evidence SSO2

<sup>100</sup> Written evidence SSO10

<sup>101</sup> Written evidence SSO3

<sup>102</sup> Written evidence SSO5

<sup>103</sup> Written evidence SSO17

tailored to the needs of individual schools.<sup>104</sup> Likewise, he questioned the Assembly's role in the making of this type of guidance.<sup>105</sup>

152. On a similar note, GL Learning Group stated:

...the right interventions need to be decided within the specific context of its socio-economic environment, leadership, teachers and pupils. Determining the effective practice to prescribe requires in-depth knowledge of the particular circumstances of the school and its peers, and understanding of the causes of under-performance.<sup>106</sup>

153. On a related note, UCAC questioned whether there was sufficient expertise and capacity available within the Department of Education and Skills to develop effective guidance.<sup>107</sup>

154. There was general support for the early involvement of practitioners and other educational experts in the development of the guidance.<sup>108</sup> In addition, those representing local government emphasised the need for consultation with local authorities on draft guidance.<sup>109</sup> Similarly, NASUWT Cymru stated that the teaching unions would wish to be consulted.<sup>110</sup> GL Education Group suggested that "resource supplier and research institutions" should be involved in drawing up guidance.<sup>111</sup> Finally, Estyn called to be named as a statutory consultee.<sup>112</sup>

155. Both Michael Imperato and UCAC questioned the speed with which guidance would be available to schools in need of intervention, given the procedure set out in the Bill for making and approving the guidance and for deviating from the guidance.<sup>113</sup>

156. The WLGA and ADEW welcomed the flexibility provided in section 35, which enables a school authority to deviate from the guidance in

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<sup>104</sup> Written evidence SSO5

<sup>105</sup> Written evidence SSO5 and RoP, paragraphs 175, and 185 to 186, 13 June 2012

<sup>106</sup> Written evidence SSO17

<sup>107</sup> Written evidence SSO9 and RoP, paragraph 54, 27 June 2012

<sup>108</sup> Written evidence SSO17, RoP, paragraph 63, 27 June 2012,

<sup>109</sup> Written evidence SSO3, SSO13 and SSO26

<sup>110</sup> RoP, paragraph 300, 27 June 2012

<sup>111</sup> Written evidence SSO17

<sup>112</sup> RoP, paragraph 220, 31 May 2012

<sup>113</sup> Written evidence SSO5, RoP, paragraph 176, 13 June, and RoP, paragraph 55, 27 June 2012

certain circumstances.<sup>114</sup> Similarly, GL Education Group suggested that this provision was “a particularly valuable aspect of the Bill.” It went on to state:

...the most effective interventions are likely to be those where the school analyses the educational improvement required, tailors its response to its specific circumstances, and commits to implementing and evaluating the impact. In this way, the Minister’s guidance may well be used directly, but it should also be seen as an impetus for schools to lead improvement measures. To be effective, school authorities will need the assurance that they can formulate their own policy statements, with such assurance being balanced by understanding that Ministers and Estyn will monitor for the required improvements.<sup>115</sup>

157. There was strong objection from some of the unions to the powers in section 37 for the Welsh Ministers to direct a school authority to take action in accordance with the guidance.

158. NUT Cymru stated:

...the idea of Welsh Ministers having the power to compel schools against their wishes, and potentially against the ethos and focus of the school, to adopt specific strategies, initiatives or methods would not be acceptable.<sup>116</sup>

159. Similarly, NASUWT Cymru asserted it “questions seriously whether the Minister should have the powers to insist that schools adopt a particular approach to pedagogy.”<sup>117</sup>

### ***Evidence from the Minister***

160. In oral evidence, the Minister made clear he believed that statutory school improvement guidance was needed and that there was a “clear demand”. He went on to state:

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<sup>114</sup> Written evidence SSO3

<sup>115</sup> Written evidence SSO17

<sup>116</sup> Written evidence SSO6

<sup>117</sup> Written evidence SSO7

There are proven techniques that have improved performance and the overall tackling and support of pupils. There are a whole series of things that we want to make available and putting it on a statutory footing will put the onus on local authorities' school improvement services and head teachers themselves to demonstrate that they are looking at this. It will also be clearer to school governors: there will be a resource to which they can turn to support their work.<sup>118</sup>

161. The Minister asserted that school authorities ("authorities") would be expected "to adopt best practice or justify why not". However, he explained that the Bill provided flexibility for authorities to deviate from the guidance "if they can demonstrate that they have an alternative way of doing things",<sup>119</sup> and that it provided discretion for authorities to determine that it would be unreasonable to follow the guidance.<sup>120</sup>

162. The Minister refuted the suggestion in evidence that the introduction of statutory guidance could de-professionalise teachers and explained that practitioners were currently involved in identifying best practice. He stated:

We are undertaking academic research in respect of the high reliability resources for publishing, we have a practitioners' panel that I have established, we have serving head teachers involved in the development of best practice, and we have located that best practice and will be publishing it on our website and it draws directly on what is going on within the classroom.

[...]

...these best practice examples are coming from the profession, they are not coming from the Minister. However, on the basis of the academic research that is available to us, we have to identify which of those practices really are leading edge

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<sup>118</sup> RoP, paragraph 47, 9 May 2012

<sup>119</sup> RoP, paragraph 46, 9 May 2012

<sup>120</sup> RoP, paragraph 59, 9 May 2012

and are delivering improvements within real school situations.<sup>121</sup>

163. In commenting on the timeliness of the guidance, the Minister explained that work had started on developing the guidance in February 2011, but that “this is the first legislative opportunity that we have had to implement it”.<sup>122</sup> He further explained that preparatory work on best practice had begun, including regional events with head teachers.<sup>123</sup>

164. On the issue of updating the guidance, the Minister explained that he will be under an obligation “to ensure that the statutory guidance is up to date”.<sup>124</sup>

165. In commenting on consultation on the draft guidance, the Minister stated he expected to consult Estyn, the WLGA, teaching unions, and the practitioners’ panel, which he had established.<sup>125</sup> The Minister did not believe it was necessary to include more detail on the face of the Bill in this regard.<sup>126</sup>

### ***Our view***

166. We note that the majority of those giving evidence support the introduction of statutory school improvement guidance, in principle. We acknowledge that the aim of the guidance is to accelerate the process of school improvement and we welcome this. We share the Minister’s view that there is a need to address the variation in school standards across Wales. Where best practice exists in schools it is right that it is utilised for the wider benefit of pupils where appropriate. As such, we are generally content with the power provided in section 33 for the Welsh Ministers to issue school improvement guidance.

167. We share the views of respondents that the involvement of the teaching profession and other educational experts in drawing up the school improvement guidance will be key to ensuring its success. It is clear from the Minister’s evidence that this is his intention, which we

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<sup>121</sup> RoP, paragraphs 142 to 143, 19 July 2012

<sup>122</sup> RoP, paragraph 149, 19 July 2012

<sup>123</sup> RoP, paragraph 151, 19 July 2012

<sup>124</sup> RoP, paragraph 151, 19 July 2012

<sup>125</sup> RoP, paragraph 130, 19 July 2012

<sup>126</sup> RoP, paragraphs 131 to 138, 19 July 2012

welcome. While we acknowledge that section 34 requires the Welsh Ministers to consult “school authorities” on the draft guidance, given Estyn’s wider role of promoting the spread of good practice in education, we believe it is important to include it as a named statutory consultee. To this end, **we recommend that section 34 is amended to require the Welsh Ministers to consult Her Majesty’s Chief Inspectorate for Education and Training (or any future equivalent body) on the draft school improvement guidance.**

168. We recognise the concerns raised in evidence about the need to ensure that guidance is sufficiently flexible to take account of local circumstances. We acknowledge the Minister’s evidence that section 35 provides school authorities with the ability to deviate from the guidance, subject to the issuing of an alternative policy statement. This section also provides that authorities do not have to comply with the duty to follow the guidance if it is “unreasonable” for them to do so. We welcome the flexibility provided by these provisions.

169. We acknowledge the concerns raised in evidence about the powers in section 37 for the Welsh Ministers to direct an authority to follow the guidance. While we have some sympathy with these concerns, we accept the rationale for the power.



## 5. Part 3 – School organisation

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### Background

170. Part 3 of the Bill:

- 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 ten pupils.

### Chapter 1 – Code on School Organisation

#### *Background*

171. This Chapter provides for a statutory Code on School Organisation (“the Code”). It sets out the procedure the Welsh Ministers must follow before issuing the Code, including consultation and the laying of the Code before the National Assembly for Wales.

#### *Evidence from respondents*

172. Those who commented welcomed the Code as a means of ensuring clarity and consistency for all involved in school organisation.

173. In commenting on the Code, Estyn stated:

Agreeing a comprehensive code of practice should remove much of the inconsistency and unnecessary bureaucracy from all aspects of this work.<sup>127</sup>

174. The WLGA and ADEW stated:

...local government welcomed the consolidation of existing guidance into one school organisation code and also the publishing of guidance regarding consultation [on school

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<sup>127</sup> Written evidence SSO2

organisation proposals]. Clear guidance in both these areas will make the process easier to administer at a local level and also simpler to understand for stakeholders involved in the process, including parents and members of the public.<sup>128</sup>

175. ATL Cymru also welcomed the Code and supported “the move to explain and simplify procedures relating to school organisation.”<sup>129</sup> However, in oral evidence it raised concern about the lack of detail provided in the Bill on the Code and its contents.<sup>130</sup>

176. Although Michael Imperato did not comment on the Code in its totality, he stated that guidance on consultation on school organisation proposals, which would form part of the Code, was “overdue” and “essential”.<sup>131</sup>

177. A number of respondents emphasised the importance of consulting relevant stakeholders on the Code.

178. On this issue, ATL Cymru highlighted the need for “full and proper” consultation and stated it would expect teaching unions to be consulted.<sup>132</sup>

179. Similarly, UCAC stated:

We would feel more comfortable if there was a clearer definition of the persons Welsh Ministers must consult regarding the code....The code is going to be an exceptionally important document, and the input of stakeholders will be crucial in its formulation; we would like to have confirmation that teachers’ unions will be on the list of consultees.<sup>133</sup>

180. Linked to the above, Michael Imperato emphasised the need for the Minister to consult widely on the draft Code and to actively seek the views of groups and individuals with direct experience of school organisation proposals.<sup>134</sup>

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<sup>128</sup> Written evidence SSO3

<sup>129</sup> Written evidence SSO8

<sup>130</sup> RoP, paragraph 85, 27 June 2012

<sup>131</sup> Written evidence SSO5 and RoP, paragraph 195, 13 June 2012

<sup>132</sup> Written evidence SSO8

<sup>133</sup> Written evidence SSO9

<sup>134</sup> Written evidence SSO5 and RoP, paragraph 199, 13 June 2012

181. The Children’s Commissioner for Wales called for “children’s rights to be clearly identified” in developing the Code. He went on to raise concern that “early anecdotal indications” had shown consultation with children and young people on school organisation proposals had been “inconsistent”, and felt that the Code provided an opportunity to address this.<sup>135</sup>

### ***Evidence from the Minister***

182. The Explanatory Memorandum explains that the Code will “deal with consultation arrangements [on school organisation proposals], modelled on best practice.” It goes on to state:

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 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.<sup>136</sup>

183. In oral evidence, the Minister explained that the Code builds on the existing school organisation guidance and will set out the operation of local determination panels.<sup>137</sup>

184. In supplementary evidence to the Committee, the Minister sets out some of the expected content of the Code, including consultation requirements that those bringing forward proposals will be subject to, and in relation to the operation of local determination panels.<sup>138</sup>

### ***Our view***

185. We note the support in evidence for a statutory Code on School Organisation and, as such, are content with section 38. We are grateful to the Minister for setting out some of the matters he intends to address in the draft Code and welcome his commitment to making the

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<sup>135</sup> Written evidence SSO25

<sup>136</sup> EM 3.55 pgs 19 to 20

<sup>137</sup> RoP, paragraph 61, 9 May 2012

<sup>138</sup> Written evidence – additional information from the Minister, 21 August 2012

draft Code available to the Committee ahead of Stage 2 proceedings on the Bill.

186. We acknowledge the requirement in section 39 for the Welsh Ministers to consult “such persons as they think fit” on the draft Code. We share the views of respondents about the importance of full and meaningful consultation on the Code. As such, **we recommend that section 39 is amended to include more detail about the types of persons to be consulted on the draft or revised School Organisation Code.** Further to this, we note the first draft Code is currently being prepared and seek assurance from the Minister that relevant parties have been involved in the early stages of its preparation.

## **Chapter 2 – School organisation proposals**

### ***Background***

187. Chapter 2 deals with school organisation proposals. It creates new arrangements for determining proposals, which involves the categorisation of objectors and the establishment of local determination panels, and provides a truncated process for determining proposals to close “small schools”.

### ***Evidence from respondents***

188. Most respondents who commented supported the need to change the existing arrangements for determining school organisation proposals and welcomed the aim of ensuring, where possible, that decisions were made at a local level.

189. In evidence, Estyn stated:

The school organisation provisions in this Bill correctly address many of the current obstacles to efficient practice in school organisation.<sup>139</sup>

190. Similarly, in commenting on the school organisation provisions, the WLGA and ADEW stated:

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<sup>139</sup> Written evidence SSO2

[it] responds positively to many concerns that have been voiced by local authorities regarding the current system of school organisation. The aim of the Bill is to simplify and shorten the process for school organisation and this principle is supported by the WLGA and ADEW. There is also widespread support in local government for ensuring that the responsibility for planning and provision of school places rests with the local authority and that in the vast majority of cases decisions regarding school organisation should be made at a local level.<sup>140</sup>

191. Carmarthenshire County Council, NAHT Cymru, ASCL and UCAC all broadly supported the move to clarify and simplify procedures in relation to school organisation proposals.

192. In contrast, NASUWT Cymru and Michael Imperato were strongly in favour of retaining the existing arrangements for determining school organisation proposals.

193. NASUWT Cymru asserted that the existing arrangements:

...provide a structure that is democratic, affords sufficient time for schools, governing bodies, local communities and other interested parties to consider carefully any such proposals and to formulate detailed responses, and allows sufficient time for the proper consideration of proposals and objections by those charged with making decisions.<sup>141</sup>

194. Michael Imperato believed that the replacement of the existing arrangements with those provided for in the Bill was a “hugely flawed proposal”.<sup>142</sup> He went on to question:

Why introduce a quasi legal process to replace a distinct and easily manageable administrative process?<sup>143</sup>

195. Regardless of their overall stance on Chapter 2, most respondents raised concern about, or sought clarification on, the categories of objectors, local determination panels and the procedures relating to

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<sup>140</sup> Written evidence SSO3

<sup>141</sup> Written evidence SSO7

<sup>142</sup> Written evidence SSO5

<sup>143</sup> *ibid*

the closure of small schools. These are addressed in more detail later in the report.

### ***Evidence from the Minister***

196. According to the Explanatory Memorandum:

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 requires reform so that those systems are shaped and decided at the local level.<sup>144</sup>

197. The Minister asserts that one of the main criticisms of the existing system is the ability of a single objector with no direct interest in the school to cause referral of the proposal to the Welsh Ministers for a decision.

198. He stated:

At the present time, around 50% of school organisation decisions come to Ministers for determination. I do not think that the system was ever intended to be like that...this introduced significant delay to the system...

[...]

It is better, bluntly, for the locality when that happens. There is less uncertainty and more clarity in the system, and people can move on quickly to whatever the new for of organisation is.<sup>145</sup>

199. In further emphasising the need for reforms to the existing system for school organisation, the Minister stated:

...surplus places in schools are costing local authorities money...Every surplus place in a school is a tax on the head of pupils within the system, and that needs to be recognised. Indeed, we are heading towards 20% surplus places in certain

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<sup>144</sup> EM 3.40 pg 17

<sup>145</sup> RoP, paragraphs 66 to 67, 9 May 2012

areas, so there are significant challenges that must be addressed by most local authorities...<sup>146</sup>

200. Finally, in commenting on the new approach to determining school organisation proposals provided for in the Bill, the Minister explained:

What we are trying to do is to put in place a determination process that allows these decisions to be taken locally, that recognises that there are different categories of objector that may have issues to raise, and that we need to ensure effective local discussion of proposals such as this. Is what we are proposing perfect? No. However, we have an existing situation that is clearly imperfect and we are trying to rectify that.<sup>147</sup>

## **Categories of objectors**

### ***Background***

201. Section 50 provides that 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 whether the proposal is determined by the Welsh Minister, a local determination panel (LDP), or the proposer.

### ***Evidence from respondents***

202. Those who commented on the categorisation of objectors were generally supportive of the approach provided. This was seen as a favourable alternative to the existing arrangements where a single objection would cause a referral of the school organisation proposal to the Minister for decision.

203. The WLGA and ADEW explained that, under the current arrangements there had been a number of instances where objections from an individual without a direct interest in the school

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<sup>146</sup> RoP, paragraph 65, 9 May 2012

<sup>147</sup> RoP, paragraph 79, 9 May 2012

reorganisation proposal triggered a referral to the Minister causing delay and “concerns and anxiety in individual communities.”<sup>148</sup>

204. On the above issue, ATL stated:

We are content with the categorisation outlined in the Bill. All too often school reorganisation proposals have been thwarted or seriously delayed by objectors with motives other than those concerned with children’s education.<sup>149</sup>

205. Similar views were expressed by NAHT Cymru and ASCL in oral evidence, and by the City and County of Swansea, Education Department.<sup>150</sup>

206. In commenting on the existing trigger of a single objection for referral of a proposal to the Minister, Michael Imperato stated:

I agree that it does, on the face of it, seem absurd that one person, potentially with no link to the school, can be able to trigger a conflict process.<sup>151</sup>

207. As such, he was “inclined to agree” with the proposals for the categorisation of objectors.<sup>152</sup>

208. In contrast to the views of respondents outlined above, NASUWT Cymru was strongly opposed “to any provision that would afford greater rights and differing weights to some objectors than others.”<sup>153</sup>

209. Notwithstanding the general support in evidence for the use of categories of objectors, a number of respondents questioned the weighting given to specific groups of objectors, or suggested changes to the categories.

210. NUT Cymru and NASUWT Cymru felt strongly that objections raised by staff and parents should be afforded the same weight as those raised by governing bodies or school councils.<sup>154</sup>

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<sup>148</sup> RoP, paragraph 335, 31 May 2012

<sup>149</sup> Written evidence SSO8

<sup>150</sup> Written evidence SSO27

<sup>151</sup> Written evidence SSO5

<sup>152</sup> *ibid*

<sup>153</sup> Written evidence SSO7

<sup>154</sup> Written evidence SSO6 and SSO7



211. Some concern was raised about the appropriateness of the threshold for category 3 objectors, particularly in the case of pupils and parents. On this issue, NUT Cymru suggested that consideration should be given to making the thresholds proportionate to the size of the school.<sup>155</sup>

212. Linked to the above, the Children's Commissioner for Wales welcomed the inclusion of school councils as a category 2 objector but raised concern that existing or potential pupils were included in category 3 and, as such would require 10 objectors before the proposal would be referred to an LDP for approval. He stated:

For those who may not be involved with the school council but have strong opinions and are affected by the proposals, mobilising a group of peers may be difficult.<sup>156</sup>

213. UCAC raised concern that, under section 53(b) a petition would only count as one objection for the purpose of calculating whether objections have been made by 10 or more category 3 objectors.<sup>157</sup>

### ***Evidence from the Minister***

214. In commenting on the categorisation of objectors, the Minister explained:

What we are trying to do in this legislation is to establish a situation whereby we give appropriate weighting to different categories of objector. Clearly, if people are going to object, that is fair enough, but there also needs to be some balance – that is, is there really substantial local support for that objection?<sup>158</sup>

215. The Minister provided further explanation of the categories and stated:

...if there were objections from those that we have identified as category 1 objectors, they would trigger a reference of the particular proposal to the Minister. That category is fairly easy

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<sup>155</sup> Written evidence SS06

<sup>156</sup> Written evidence SS025

<sup>157</sup> Written evidence SS09

<sup>158</sup> RoP, paragraph 79, 9 May 2012

to understand. These are objections that would come from outside an existing local area, so would signify a concern that is likely to be beyond that of one local authority...

In respect of categories 2 and 3, objectors in category 2 would trigger immediately a reference to the local determination panel. In the case of category 3, there would need to be 10 objectors for a reference to the local determination panel. We are right in the level of weight that we are giving here. We have to recognise that the LDP process should be triggered when there is a genuine level of local concern. That is what we are trying to signify here through the determination of particular categories.<sup>159</sup>

216. In commenting on the need for 10 objectors in category 3 to trigger referral to an LDP, the Minister made clear he “[does] not think that it is a particularly onerous burden.”<sup>160</sup>

## **Local determination panels**

### ***Background***

217. Section 53 provides for a local authority to appoint an LDP to determine proposals where there are no category 1 objectors, at least one category 2 objector and/or at least ten category 3 objectors. Schedule 5 provides a framework for the membership, procedure and miscellaneous matters relating to LDPs.

### ***Evidence from respondents***

218. There were varying levels of support for the introduction of LDPs to determine school re-organisation proposals. On balance, those who commented supported the use of LDPs in principle as an alternative to the existing arrangements, albeit with serious reservations.

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<sup>159</sup> RoP, paragraph 156, 19 July 2012

<sup>160</sup> RoP, paragraph 159, 19 July 2012

219. The WLGA and ADEW suggested that the use of LDPs was “preferable to automatic referral to Welsh Ministers or to creating a schools adjudicator”.<sup>161</sup> They stated:

We recognise that we need some kind of independent process of arbitration, and this is as good as we can get while recognising that there are potential flaws there.<sup>162</sup>

220. Governors Wales suggested that the use of local determination panels was a “sensible approach”, but went on to raise concerns about the independence of LDPs.<sup>163</sup>

221. It was implicit in the evidence from Estyn and UCAC that they were supportive of LDPs, in principle, although both raised concerns about, or sought clarification on the constitution and operation of LDPs.<sup>164</sup>

222. The key consideration for most respondents including NAHT Cymru and ASCL, UCAC, Governors Wales and Barnardo’s Cymru was the need for LDPs to be independent of local authorities and to be able to make impartial decisions that held up to public scrutiny.

223. Linked to the issue of independence, serious concern was raised about the lack of detail provided on LDPs, in particular on the selection and appointment of panel members and the constitution of LDPs, and on how they were likely to operate in practice.

224. In evidence Estyn stated:

There needs to be clearer regulation in relation to the make-up and work of the panels. This will help to create credibility in relation to the objectivity and consistency of their decision making.<sup>165</sup>

225. Likewise, Wrexham County Borough Council, Lifelong Learning Department stated:

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<sup>161</sup> Written evidence SSO3

<sup>162</sup> RoP, paragraph 327, 31 May 2012

<sup>163</sup> Written evidence SSO10

<sup>164</sup> Written evidence SSO2 and RoP, paragraph 238, 31 May 2012, and Written evidence SSO9

<sup>165</sup> Written evidence SSO2

...there is need for clearer guidance surrounding Terms of Reference, appointments, membership, remit, decision making and accountability of this Panel.<sup>166</sup>

226. Finally, City and County of Swansea's Education Department stated:

...there is clearly a need for more clarity on the proposed make up of a local determination panel as this surely should not be a 'political' panel involving Councillors.<sup>167</sup>

227. Some respondents merely sought clarification on the issues outlined above. Others suggested that further detail should be provided in accompanying guidance (or, in this case the School Organisation Code). However, ATL Cymru asserted:

We believe strongly that the Bill should include clear provisions on: how these panels will be set up; who is and is not eligible to sit on them; the limits of their jurisdiction; and crucially, their method of selection.<sup>168</sup>

228. A number of respondents, including Governors Wales and ASCL suggested that panel members could be drawn from a regional consortia, as a way of helping address concerns about independence.<sup>169</sup>

229. In commenting on the above issue, ATL Cymru believed that a consortia approach "would work in principle". It went on to explain:

The problem...about very local areas is that people get caught up in being either for or against proposals. If you have a broader perspective, which would come from within a consortium, that would give you perhaps more of a balanced view. So, there could well be a role for the consortia there.<sup>170</sup>

230. Michael Imperato strongly opposed the use of LDPs and, as previously mentioned, argued that the existing arrangements for

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<sup>166</sup> Written evidence SSO13

<sup>167</sup> Written evidence SSO27

<sup>168</sup> Written evidence SSO8

<sup>169</sup> Written evidence SSO10 and RoP, paragraph 129, 13 June 2012

<sup>170</sup> RoP, paragraph 90, 27 June 2012

dealing with objections should be retained. Like other respondents, he raised concern about the independence of LDPs and stated:

Any kind of administrative or legal process which seeks to resolve challenges between persons or organisations has to be seen to be fair and independent. This can never be the case with an LDP.

[...]

There is an inherent contradiction in seeking to have an independent decision-making panel whilst at the same time; such panel is close to the local decision...It's going to be virtually impossible to find an able person, with knowledge of the education system, in the immediate locality to sit on the LDP without some sort of link to the school in question or the LEA.<sup>171</sup>

231. He also questioned whether the necessary level of support and expertise would be available to LDPs to ensure that they operated effectively and that their decisions held up to scrutiny.

232. Linked to this, Michael Imperato believed that LDPs would inevitably involve a greater number of judicial review challenges than under existing arrangements. He stated:

There will be lots of fertile ground for challenges, on the composition of the panel, on how it runs a case, and on its decision letter.<sup>172</sup>

233. Finally, Michael Imperato refuted the Minister's suggestion that LDPs would lead to speedier decisions and cost savings. In contrast, he suggested costs are likely to be higher using LDPs. The cost of LDPs is addressed later in Chapter 9 of the report.<sup>173</sup>

234. NASUWT Cymru objected to the use of LDPs on the basis that they were undemocratic.<sup>174</sup>

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<sup>171</sup> Written evidence SSO5

<sup>172</sup> *ibid*

<sup>173</sup> *ibid*

<sup>174</sup> RoP, paragraphs 313 and 316, 27 June 2012

235. Both Barnardo’s Cymru and NASUWT Cymru suggested that the Bill should make provision for an appeals mechanism to enable appeals against a decision by LDPs ahead of any judicial review challenge.<sup>175</sup>

236. NUT Cymru strongly opposed the provision under section 55 which enabled proposers to determine proposals in instances where approval was not required by the Welsh Ministers or LDPs. It raised concern about the ability of proposers to make impartial decisions and went on to suggest that “Welsh Ministers, or the independent local decision making panel, should examine the basis of all objections.”<sup>176</sup>

### ***Evidence from the Minister***

237. The Explanatory Memorandum explains that LDPs “will be comprised of five persons who may either be local authority members without prior connection to a proposal, or independent lay persons.” It goes on to state:

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 scrutiny at a local level by individuals familiar with local conditions.<sup>177</sup>

238. In responding to the concerns raised in evidence about LDPs, the Minister stated:

Our overwhelming desire here is that, where decisions are genuinely local, they should be taken at a local level. However, let me say that this is not a tribunal process like an employment tribunal. This is not a process like a public inquiry on a planning appeal. This is a determination process, and the process that will be followed by the local determination panel will be the same, in a sense, as would be followed by me if I were making the determination. The papers will come to that

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<sup>175</sup> Written evidence SSO22 and RoP, paragraph 327, 27 June 2012

<sup>176</sup> Written evidence SSO6

<sup>177</sup> EM3.55, pg 20

panel, which will consider the papers and make a decision on the basis of those.<sup>178</sup>

239. On the issue of the independence of LDPs, the Minister asserted:

We want these to be independent; there will be officers within local authorities already who have legal responsibility for ensuring that persons who have conflicts of interest are not appointed to such panels. I have heard the evidence given to you by a number of people including a prominent lawyer in the field, but I do not share their concerns.<sup>179</sup>

240. He also explained that he will “set out the detail of the appointments process [for panel members] in statutory guidance.”<sup>180</sup>

241. In supplementary evidence to the Committee, the Minister outlined the matters he intends to address in the draft Code on School Organisation, specifically in relation to the operation of local determination panels. These matters include the recruitment and composition of LDPs, training of LDP members, Clerks to LDPs and legal advice, and the evidence to be considered by LDPs.<sup>181</sup>

242. In commenting on the use of regional consortia to draw panel members, the Minister stated:

Under what we are proposing, local authorities could work with others in their regional consortia, for example, to determine the membership of local determination panels. That is entirely open to them to do.<sup>182</sup>

243. In addition, he explained it was his intention to include in the draft Code the suggestion that “local authorities could co-operate to develop shared regional pools” but at the same time “should look to ensure at least some members have specific local knowledge.”<sup>183</sup>

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<sup>178</sup> RoP, paragraph 162, 19 July 2012

<sup>179</sup> RoP, paragraph 162, 19 July 2012

<sup>180</sup> RoP, paragraph 168, 19 July 2012

<sup>181</sup> Written evidence – additional information from the Minister, 21 August 2012 – School Organisation Code

<sup>182</sup> RoP, paragraph 195, 19 July 2012

<sup>183</sup> Written evidence – additional information from the Minister, 21 August 2012 – School Organisation Code

244. The Minister made clear that he did not believe an appeals mechanism for the purpose of appealing against a decision made by an LDP was appropriate or necessary.<sup>184</sup>

## **Proposals to close “small schools”**

### ***Background***

245. Chapter 2 provides for a truncated process for the closure of “small schools” (those with fewer than 10 registered pupils) with no requirement to consult prior to the publication of statutory notices, and, irrespective of whether objections are received, the proposal will be determined by the proposer.

### ***Evidence from respondents***

246. Few comments were received on the procedure for dealing with proposals to close “small schools”. Those that did comment seemed to accept its rationale but did not necessarily go as far as to support the provisions.

247. The WLGA and ADEW clearly supported the provisions in relation to the closure of small schools and suggested it would “allow local authorities to make sensible decisions regarding the viability of very small schools.”<sup>185</sup>

248. Michael Imperato raised concern that the proposals could be seen as “fettering discretion”, and that this could provide the basis of judicial review challenge. In oral evidence, he went on to explain:

...if you are grouping all small schools by a threshold...you are then not allowing due credence to those kinds of individual quirks or particular points. That is the danger of any threshold point.<sup>186</sup>

249. NUT Cymru felt that decisions by proposers to close small schools should be made within the wider context and should not be solely dependent on the number of registered pupils. It stated:

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<sup>184</sup> RoP, paragraph 164 to 168, 19 July 2012

<sup>185</sup> Written evidence SSO3

<sup>186</sup> RoP, paragraph 263, 13 June 2012



No school should be closed without an examination of the implications of doing so. This proposal essentially gives guidance to proposers to close schools with fewer than 10 pupils irrespective of the reasons behind that number. It could be that a school has this amount of children because travelling to a different school is unfeasible. The socio-geographic nature of the school must also be considered, not just a decision by headcount. It is also important to look at the potential for growth at the school.<sup>187</sup>

250. Linked to the above, NASUWT Cymru suggested that proposals should be “equality impact assessed and assessed against community interest”.<sup>188</sup>

251. In addition, NUT Cymru questioned whether proposers were likely to deal impartially with objections when determining their own proposals to close small schools. As such, it suggested that this would render the making of objections pointless.<sup>189</sup>

### ***Evidence from the Minister***

252. In commenting on the process for closing “small schools”, the Minister stated:

We have to have a mechanism that enables decisions to be taken more swiftly.<sup>190</sup>

253. It was clear from the Minister’s evidence that he did not believe “small schools” were viable.<sup>191</sup>

### ***Our view***

254. We acknowledge the support in evidence for the need to reform the existing arrangements for determining school organisation proposals. We note the rationale put forward by the Minister for this reform, including the inefficiencies within the current system which can lead to uncertainty for pupils, parents and staff. As such, we accept that reform is necessary.

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<sup>187</sup> Written evidence SSO6

<sup>188</sup> Written evidence SSO7

<sup>189</sup> Written evidence SSO6

<sup>190</sup> RoP, paragraph 205, 19 July 2012

<sup>191</sup> RoP, paragraph 205, 19 July 2012

255. Like many of those giving evidence, we believe it is inappropriate for a single objector without a direct interest in a proposal to cause a referral to the Welsh Ministers. As such, we welcome the move to address this issue by means of Chapter 2.

256. We acknowledge the general support in evidence for the categorisation of objectors as a viable alternative to the existing single objector system. We accept the rationale put forward by the Minister for the categorisation of objectors and agree that it is an appropriate and reasonable approach. To this end, we are generally content with sections 50 and 51.

**257. We note the evidence received which questioned the weighting given to specific groups of objectors and, in some cases suggested changes to the categories, and we recommend that the Minister give consideration to this ahead of Stage 2.**

258. We recognise the general support among respondents for decisions on school organisation proposals to be taken at a local level, where possible. We accept the rationale put forward by the Minister for local decision making and we agree, in principle with this approach.

259. Notwithstanding the above, we have serious reservations about the use of LDPs as a means of delivering this policy. The use of such panels represents a fundamental change to existing arrangements and, as such, brings with it considerable uncertainty and an element of risk in that there is no evidence to suggest that such panels used in this context will be effective.

260. We believe strongly that, in order for a system of local decision making to work, it must be, and be seen to be fair, to be independent and to enable impartial decisions that hold up to public scrutiny to be made. We share the concerns in evidence that, as currently drafted, the provisions in relation to LDPs fail to adequately provide for these.

261. While we note the Minister's evidence about how he intends LDPs to operate in practice, we remain concerned that this may be an overly simplistic view, given the nature of decisions to be made.

262. In view of the above, we remain unconvinced about the use of LDPs as provided for in the Bill.

263. However, given that we did not receive evidence of a viable alternative, and in the event that the Minister decides to pursue the LDP model, we make the following observations.

264. We acknowledge the Minister's evidence that some of the detail in relation to the operation of LDPs will be contained within the School Organisation Code. We welcome the information provided by the Minister outlining the matters that he intends to include in the draft Code in respect of LDPs.

265. We share the views of respondents that some of the concerns about the independence of LDPs could be addressed by drawing members from a regional pool. It is clear from the Minister's evidence that this would be permitted under the terms of the Bill and the Code, which is to be welcomed.

266. While this goes some way towards satisfying our concerns in relation to the independence of LDPs, there is nonetheless nothing on the face of the Bill that addresses these matters. To this end, and in view of the strength of the evidence we received, **we recommend that the Bill is amended to ensure that the principle of independence is enshrined within the legislation. We further recommend that Schedule 3 is amended to give clear details as to how LDPs will operate in practice.**

267. Further to this, **we recommend that the Minister undertake a review of the operation of LDPs at the earliest opportunity and reports back to the Committee.**

268. Separately, we acknowledge the Minister's rationale for providing a truncated process for dealing with proposals to close "small schools". We note the general acceptance in evidence of this rationale. As such, we are content with provisions in relation to proposals to close "small schools".

## **Chapter 3 – Rationalisation of school places**

### ***Background***

269. Sections 58 to 64 set out powers of the Welsh Ministers to direct local authorities and governing bodies to make proposals to

rationalise school places, and to make their own proposals to rationalise places if the local authority fails to do so. If objections are made to the Welsh Ministers' proposals a "local inquiry" must be held.

### ***Evidence from respondents***

270. Few specific comments were received on Chapter 3.

271. In commenting generally on the rationalisation of school places, ATL Cymru stated:

We accept that there is an oversupply of school places in Wales. This means that funding is not best used and that children's education suffers as a result. We welcome measures that will speed up decision making in this area.<sup>192</sup>

272. UCAC raised concern about the lack of detail in the Bill on "local inquiries" (section 62) and sought clarification on and how they would operate in practice. In addition, it opposed the provision under section 63(2) which disapplied the requirement on the Welsh Ministers to cause a local inquiry to be held if making further proposals to remedy excessive or insufficient school places.

### ***Evidence from the Minister***

273. In oral evidence, the Minister explained that the power for Welsh Ministers to rationalise school places provided in the Bill is a restatement of existing powers, which are needed as a "backstop".

274. In commenting on the lack of detail provided for in the Bill on a "local inquiry", the Minister explained that the process for establishing a "local inquiry" was already provided for in the SSFA.<sup>193</sup>

275. In supplementary evidence the Minister provided details on the scrutiny procedures that would apply to further proposals made by the Welsh Ministers to rationalise school places under section 60 in accordance with section 63(1)(c). He explained:

The Welsh Ministers' use of their power to make further proposals under s63(1)(c) would be an extremely rare

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<sup>192</sup> Written evidence SS08

<sup>193</sup> RoP, paragraph 208, 19 July 2012

event...the process leading up to the publication of proposals is likely to have been a very lengthy one. It consequently seems appropriate that if the Welsh Ministers, after considering the outcome of the local inquiry, decide that further proposals are required...that that process can be concluded as quickly as possible.<sup>194</sup>

276. The Minister went on to explain that further proposals made under section 63(1)(c) would need to be published and that there would be an opportunity for objections to be submitted. The Welsh Ministers “would still have to have regard to those objections before determining to adopt or not adopt the proposals.”<sup>195</sup>

### ***Our view***

277. We note that little evidence was received on rationalisation of school places. We acknowledge that these powers largely re-enact Schedule 7 to the SSFA. As such, we are content with Chapter 3.

## **Chapter 4 – Regional provision for special educational needs**

### ***Background***

278. Sections 65 to 71 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 or to make their own proposals in respect of regional provision.

### ***Evidence from respondents***

279. Few comments were received on Chapter 4. Those that did comment seemed cautious of a regional approach to special educational needs provision, with the exception of NUT Cymru who suggested it was “a positive step forward”.<sup>196</sup>

280. The WLGA and ADEW explained that examples of regional provision for special educational needs already existed but went on to

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<sup>194</sup> Written evidence – additional information from the Minister, 21 August 2012

<sup>195</sup> Written evidence – additional information from the Minister, 21 August 2012

<sup>196</sup> Written evidence SSO6

suggest “careful consideration would need to be given to a more widespread regional approach”.<sup>197</sup>

281. Wrexham County Borough Council, Lifelong Learning Department raised concern about regional special educational provision given that “legal responsibilities and accountabilities remain at individual local authority level.”<sup>198</sup>

282. Other evidence received focused mainly on the potential impact of regional provision for special educational needs on the well-being of pupils, in particular the negative impact of longer journey times for pupils and on family visits in the case of residential provision if this was further away from a pupil’s home.<sup>199</sup>

### ***Evidence from the Minister***

283. In oral evidence, the Minister explained that the power provided in the Bill in respect of regional provision for special educational needs “largely restates what is in the [Education Act 2002]”.<sup>200</sup>

### ***Our view***

284. We note the evidence received on regional special education provision, including the evidence on the potential impact of regional provision on the well-being of pupils. We recognise that there was no direct opposition to the powers in sections 66 and 67 for the Welsh Ministers to direct local authorities to consider making regional provision or to make proposals to secure regional provision. We acknowledge that these powers restate existing powers in the Education Act 2002. As such, we are content with Chapter 4.

## **Chapter 5 – Proposals for restructuring sixth form education**

### ***Background***

285. Sections 72 to 78 provide the Welsh Ministers with the power to make and determine proposals for restructuring sixth form education from any existing maintained schools.

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<sup>197</sup> Written evidence SSO3

<sup>198</sup> Written evidence SSO13

<sup>199</sup> Written evidence SSO14 and SSO22

<sup>200</sup> RoP, paragraph 93, 9 May 2012

### ***Evidence from respondents***

286. Few respondents commented on the proposals for restructuring sixth form education.

287. UCAC raised concern that the power provided to the Welsh Ministers under section 72 to bring forward proposals to discontinue sixth form provision within secondary schools extended beyond that provided in the Learning and Skills Act 2000.<sup>201</sup>

288. In opposing this extension of power, UCAC suggested that decisions such as these were best made at a local level. It went on to assert that sixth forms were often a “central and integral part” of secondary schools and, as such their closure could have a negative impact on the school as a whole. It also raised specific concern about the impact of closures of Welsh-medium sixth forms.<sup>202</sup>

289. Linked to the above, NAHT Cymru and ASCL suggested that decisions on restructuring of sixth forms should be made locally and highlighted the inconsistency between the approach taken in Chapter 5 and Chapter 2 (school organisation proposals) to decision making.<sup>203</sup>

290. On a separate issue, Barnado’s Cymru explained the difficulties encountered by disabled young people in accessing further education and questioned whether the creation of sixth form special schools provided for in section 72(1) would “counteract or compound these difficulties”.<sup>204</sup>

### ***Evidence from the Minister***

291. In oral evidence, the Minister explained that the power provided in the Bill in relation to restructuring sixth form education “is really a restatement of powers that already exist under the Learning and Skills Act 2000.”<sup>205</sup> He went on to state:

Clearly the dispersal of post-16 education across Wales, institutionally, is uneven. It is not simply delivered through sixth forms; it is also delivered through further education

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<sup>201</sup> Written evidence SSO9

<sup>202</sup> *ibid*

<sup>203</sup> RoP, paragraphs 138 and 141, 13 June 2012

<sup>204</sup> Written evidence SSO22

<sup>205</sup> RoP, paragraph 97, 9 May 2012

colleges. We need to have an ability to look nationally at the provision of post-16 education, so I think it is right that Welsh Ministers, given our funding role and our strategic role, be involved in that.<sup>206</sup>

292. The Minister asserted that the powers to restructure sixth form education in the Bill and those in the Learning and Skills Act 2000 “were essentially the same”. He went on to explain:

The one difference is that the Learning and Skills Act requires that the power to make proposals is exercised with a view to achieving several general objectives relating to improved educational achievement, participation rate increase and broadening of the range of opportunities. We have not put these in the Bill, but they will be set out in the school organisation code.<sup>207</sup>

293. In commenting on the need for decisions to close sixth forms to be taken within a local context and at a local level, the Minister stated:

We would clearly need to take local factors into account, but one of the issues that you have to make a judgment on in respect of sixth forms is the balance between sixth-form provision in an area and further education provision. Obviously, further education provision is separate from school organisation. There is a difference in that, essentially, we determine the funding for sixth forms, just as we determine the funding for further education colleges. So, there is a strong central element in the planning of post-16 education already.<sup>208</sup>

### ***Our view***

294. We note the evidence received on the proposals for restructuring sixth form education. We acknowledge the evidence from some respondents to suggest that decisions to close sixth forms should be made, where possible, at a local level. We also acknowledge the Minister’s evidence about the funding of sixth form provision and the strategic role of the Welsh Ministers in the provision of post-16

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<sup>206</sup> RoP, paragraph 97, 9 May 2012

<sup>207</sup> RoP, paragraph 212, 19 July 2012

<sup>208</sup> RoP, paragraph 214, 19 July 2012



education. The majority of Members were convinced by the Minister's argument and, as such, are content with the provisions in Chapter 5. Other Members shared the views of respondents and felt that decisions to close sixth forms should be made at a local level, in line with the arrangements for determining other school organisation proposals.

## 6. Part 4 - Welsh in Education Strategic Plans

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### Background

295. Part 4 provides for the introduction of statutory Welsh in Education Strategic Plans (WESPs), which replaces the existing voluntary scheme. Local authorities must prepare WESPs which set out, among other things, the authorities' proposals for improving the planning of and standards of Welsh medium education and of the teaching of Welsh in its area.

### *Evidence from respondents*

296. There was broad support in evidence for placing Welsh in Education Strategic Plans on a statutory basis.

297. ATL Cymru, UCAC, Governors Wales, NUT Cymru, RhAG and Wrexham County Council's Lifelong Learning Department all expressed general agreement with the intent of these sections of the Bill.<sup>209</sup>

298. Governors Wales believed that the introduction of statutory WESPs will assist local authorities to improve planning for sufficient Welsh-medium places in schools.<sup>210</sup> It also suggested that this preparation should form part of local authorities' wider planning policies.<sup>211</sup>

299. The WLGA and ADEW expressed similar views to those of Governors Wales and, whilst supporting the provisions in the Bill, suggested that planning for Welsh-medium education should be incorporated into wider local authority plans for education.<sup>212</sup>

300. Estyn also expressed support for placing WESPs on a statutory footing. It said:

I am confident that strengthening the Welsh unit within the [Welsh government] department and putting the plans on a statutory basis will lead to greater consistency, that the plans will be more thorough and that it will be necessary to respond

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<sup>209</sup> Written evidence, SSO8, SSO9, SSO10, SSO6, SSO20 and SSO13

<sup>210</sup> Written evidence, SSO10

<sup>211</sup> *ibid*

<sup>212</sup> Written evidence, SSO3

to the need expressed by parents... Anything that is statutory is going to be more robust, and greater resources and more thought will be given to it.<sup>213</sup>

301. A number of respondents raised concern that although the Bill provides for improved planning of, and standards of Welsh-medium education, it does not explicitly provide for improved access to Welsh-medium education or ensure that any increased demand for Welsh-medium provision is met.<sup>214</sup>

302. On this issue, RhAG stated:

...no mention is made of ensuring that the provision is sufficient to meet the needs that come to light through the measuring of demand.

[...]

...it is not improvement in the planning of the provision that is needed, which is a matter relating to processes, but the improvement of provision itself.<sup>215</sup>

303. RhAG went on to suggest that the Bill should be amended to address this issue.<sup>216</sup>

304. Similar views were expressed by the Children's Commissioner for Wales who emphasised the importance of improving access to Welsh-medium provision.<sup>217</sup>

305. A number of respondents commented on the potential consequences of non-compliance with the duty to prepare WESPs and the fact that there is no specific provision in the Bill that deals with non-compliance.

306. NUT Cymru suggested that there was likely to be some scepticism about the effectiveness of WESPs and "what practical advances will be

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<sup>213</sup> RoP, paragraphs 242 and 244, May 31 2012

<sup>214</sup> Written evidence SSO20 and SSO25

<sup>215</sup> Written evidence SSO20

<sup>216</sup> *ibid*

<sup>217</sup> RoP, paragraphs 74 - 76, 11 July 2012

made under these proposed arrangements” without any accompanying sanction regime.<sup>218</sup>

307. In their evidence, RhAG said:

We call for the formulation of provisions that will explain in an unambiguous manner the steps that the Government proposes to take in dealing with a local authority that does not comply with the Bill’s requirements [with regards to WESPs].<sup>219</sup>

308. Those representing local government emphasised the need to provide adequate funding to ensure the successful delivery of WESPs.<sup>220</sup>

### ***Evidence from the Minister***

309. According to the Explanatory Memorandum, despite the introduction and use of Welsh Education Schemes by local authorities, issues around inadequate planning for Welsh-medium education remain.<sup>221</sup>

310. It goes on to suggest that without statutory WESPs “it is likely that the fragmented and reactive approach to the planning and provision of Welsh-medium education would continue”.<sup>222</sup>

311. Responding to questions as to how local authorities will ensure that they have taken “all reasonable steps” to implement a WESP, the Minister stated:

We expect local authorities to look at the future provision that they need locally, to take into account our transformation agenda and their own plans for capital investment in the future under the twenty-first century schools programme, and, obviously, to measure demand for Welsh-medium education going forward.<sup>223</sup>

312. In relation to assessing demand, the Minister went on to say:

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<sup>218</sup> Written evidence, SSO6

<sup>219</sup> Written evidence, SSO20

<sup>220</sup> Written evidence, SSO3

<sup>221</sup> EM 3.68, pg 23

<sup>222</sup> EM 3.79, pg 24

<sup>223</sup> RoP, paragraph 103, 9 May 2012

[Local authorities] will have a sense of progression from Welsh-medium nurseries right the way through, and they will be able to build their own projections on that basis.<sup>224</sup>

313. He expected the Bill would ensure the proper measurement of demand for Welsh-medium provision, and for local authorities to incorporate this within their plans and to identify how demand for provision will be met.<sup>225</sup>

314. The Minister added:

...we do not expect the planning of Welsh-medium provision to be tangential or additional to a local authority's overall approach to its planning of school provision in general. We expect it to be at the heart of it. Therefore, if they are taking into account the planning of school places, the demand for Welsh-medium education has to be one of the things that they are taking into account right at the outset.<sup>226</sup>

315. On the issue of non-compliance, the Minister stated:

We will have the power to approve or not the plan submitted by the local authority, to seek modifications to it, or to prepare a plan on behalf of a local authority if it fails to do that. So, we will retain the ability to intervene at that level.<sup>227</sup>

316. In commenting on the suggestion that the Bill should include a sanction regime for non-compliance with the statutory requirements for WESPs, the Minister stated:

I am broadly happy with what we have put into the Bill. I think that what we are doing here is sending quite a clear signal of our expectations to local authorities. It is an important area for us to get right. Bear in mind that the Bill allows me, of course, if I am not satisfied with the plan drawn up by the local authority, to impose a plan myself.<sup>228</sup>

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<sup>224</sup> RoP, paragraph 107, 9 May 2012

<sup>225</sup> RoP, paragraphs 232 to 234, 19 July 2012

<sup>226</sup> RoP, paragraph 234, 19 July 2012

<sup>227</sup> RoP, paragraph 105, 9 May 2012

<sup>228</sup> RoP, paragraph 226, 19 July 2012

### *Our view*

317. We note the broad support in evidence for the introduction of statutory Welsh in Education Strategic Plans (WESPs). We acknowledge that the desired outcome of WESPs is to improve the planning for Welsh-medium education in Wales. We share the Minister's view on the need to address issues relating to inadequate planning for the provision of Welsh-medium education. As such, we are generally content with the powers provided in Part 4 of the Bill.

318. We acknowledge the concerns raised in evidence about the need to ensure that the demand for Welsh-medium education is met. We note the suggestion that the Bill should go further to ensure that local authorities make adequate provision for Welsh-medium education in their areas.

319. We note the views of the Minister on this point but in light of the evidence received from respondents, **we recommend that, ahead of Stage 2, the Minister gives consideration to ensuring that the Bill provides for WESPs to contain local authorities' proposals on how they will ensure that any increased demand for Welsh-medium provision is adequately met.**

320. We note the concern raised in evidence that the Bill does not contain provision for formal sanctions for non-compliance with the statutory requirements for WESPs. We further note the suggestion that the Bill should include a sanction regime. We welcome the powers in section 86 of the Bill which enable the Minister to draft and impose a plan on a local authority if he is not satisfied with the authority's original plan. In view of this, and the Minister's evidence, we are satisfied with the provisions, as drafted.

## 7. Part 5 – Miscellaneous schools functions

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### Free breakfasts in primary schools

#### *Background*

321. Section 89 places a duty on a local authority to provide free breakfasts 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. The duty 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.

322. The Minister has confirmed that it is the Welsh Government’s intention to transfer the specific ring-fenced grant funding for free school breakfasts in primary schools to the Revenue Support Grant (RSG).

#### *Evidence from respondents*

323. There was general support in evidence for placing the provision of free school breakfasts on a statutory basis.

324. Notwithstanding the above support, several respondents raised concern about the effect of the transfer of specific ring-fenced funding, currently in place for the purpose of providing free breakfasts, into the RSG on the level and equality of provision.

325. On this issue, Carmarthenshire County Council suggested that the free school breakfast service was at risk of being lost and that the service provided could become sub-standard.<sup>229</sup>

326. Similar views were expressed by Rhondda Cynon Taf County Borough Council.<sup>230</sup>

327. Save the Children stated that moving the funding for the free school breakfast initiative into the RSG must not affect the level and quality of service currently being provided.<sup>231</sup>

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<sup>229</sup> Written evidence SSO26

<sup>230</sup> Written evidence SSO12

328. The City and County of Swansea’s Education Department echoed the views of Rhondda Cynon Taf CBC and said that it is vital that sufficient funding is transferred to local authorities to reflect the true cost of the scheme.<sup>232</sup>

329. NUT Cymru stated that the lack of ring-fenced funding is a “serious cause of concern”.<sup>233</sup>

330. In their evidence, NASUWT Cymru maintained that funding for the primary school free breakfast initiative in the RSG must be clearly identified through hypothecation.<sup>234</sup>

331. The Local Authority Caterers Association (LACA) said that whilst accepting that the transfer of funding into the RSG could lead to a reduction in bureaucracy, they were concerned that the lack of ring-fenced funding may lead, in worst case scenarios, to the disappearance of the provision.<sup>235</sup>

332. On a related issue, Children in Wales noted that the Bill does not give direction on how the Welsh Government will seek to increase uptake of the free school breakfast scheme, how it will safeguard the service as the existing grant moves into RSG, or what arrangements will be in place to monitor the take up of free breakfasts.<sup>236</sup>

333. The issue of monitoring the take-up of free school breakfasts was also raised by Save the Children.<sup>237</sup>

334. A number of respondents sought clarification on, or raised concerns about how, local authorities would determine it was “unreasonable” to provide free school breakfasts.

335. Barnado’s Cymru questioned the meaning of the word “unreasonable” and stated that they would like to see a definition in the Bill. They went on to say that local authorities, when deciding that

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<sup>231</sup> Written evidence SSO19

<sup>232</sup> Written evidence SSO27

<sup>233</sup> Written evidence SSO6

<sup>234</sup> Written evidence SSO7

<sup>235</sup> Written evidence SSO11

<sup>236</sup> Written evidence SSO23

<sup>237</sup> Written evidence SSO19



it is unreasonable to provide a free school breakfast scheme, must provide evidence to support their decision.<sup>238</sup>

336. Similar views were expressed by a number of other respondents including UCAC, the City and County of Swansea's Education Department, Governors Wales, Save the Children, Children in Wales and NUT Cymru.<sup>239</sup>

337. UCAC, Children in Wales and the City and County of Swansea's Education Department sought further explanation regarding the definition of "unreasonable" and asked for clarification on what circumstances could lead a local authority to make that decision.<sup>240</sup>

338. Save the Children suggested that the Welsh Government should issue guidance that contains a full and exhaustive list of criteria for where it would be "unreasonable" for a local authority to provide the free school breakfast service.<sup>241</sup>

339. In contrast, NUT Cymru highlighted the need for flexibility and stated:

We would not want to see the Minister try to dictate a particular set of criteria, because there has to be a degree of flexibility so that an authority can say that it has looked at the circumstances of a particular school and it does not feel that it is practical to continue.<sup>242</sup>

340. The Children's Commissioner for Wales suggested that guidance issued under section 89(5) should include a clear mechanism through which pupils and parents could challenge incidents where a local authority decides that it is unreasonable to provide a free school breakfast service.<sup>243</sup>

### ***Evidence from the Minister***

341. In commenting on the removal of hypothecated funding for the free school breakfast initiative, the Explanatory Memorandum states:

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<sup>238</sup> Written evidence SSO22

<sup>239</sup> Written evidence SSO9, SSO27, SSO10, SSO19, SSO23 and SSO6

<sup>240</sup> Written evidence SSO9, SSO23 and SSO27

<sup>241</sup> Written evidence SSO19

<sup>242</sup> RoP, paragraph 343, 27 June 2012

<sup>243</sup> Written evidence SSO25

It is anticipated that [the] decrease [in the take up of free school breakfasts] will continue and as such the Welsh Government's intention is to transfer the specific grant funding to the RSG.<sup>244</sup>

342. In responding to concerns raised regarding the transfer of specific grant funding into the RSG, the Minister stated:

It is right that we seek to reduce the number of specific grants that we have in the system and ensure that more of those are within the revenue support grant, because that minimises the overall administrative costs that face us and local authorities.<sup>245</sup>

343. On the meaning of the word "unreasonable" with regards to a local authority's duty to provide a free school breakfast service, the Minister stated:

There will be an obligation on local authorities to act reasonably in this process. They will understand the test that they have to make to satisfy that sort of judgement. (...) you could say that a lack of demand, disproportionate costs and staffing issues are factors that would affect the decision by a local authority. It is on that basis that the test of reasonableness would be made.<sup>246</sup>

344. In commenting on funding any future take-up of free school breakfasts, the Minister said:

In the course of preparing this legislation, we have budgeted for further modest growth in the free school breakfast scheme going forward on the basis of what we have seen in the past.<sup>247</sup>

345. And:

...the grant has risen consistently. It was £10.7 million in the last financial year, it is £12.7 million in this financial year, and, at the point of transfer, it is predicted to be £14.7 million, so I

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<sup>244</sup> EM 3.108, pg 29

<sup>245</sup> RoP, paragraph 257, 19 July 19 2012

<sup>246</sup> RoP, paragraphs 109 and 111, 9 May 2012

<sup>247</sup> RoP, paragraph 115, 9 May 9 2012

think that we have been quite generous in the provision that we have allocated.<sup>248</sup>

### ***Our view***

346. We note the rationale put forward by the Minister for transferring the specific ring-fenced grant funding for the Primary School Free Breakfast Initiative to the RSG.

347. Given the importance of the initiative, we welcome the corresponding move to legislate in this area as a means of ensuring that the provision of free schools breakfasts continues following the transfer of funding.

348. We note that the majority of those giving evidence support the proposals to place a duty on local authorities to provide free breakfasts for pupils in primary schools, in principle. As such, we are generally content with the powers provided in sections 89 to 91 of the Bill.

349. Notwithstanding the above, we acknowledge the concern raised in evidence that the transfer of funding will lead to inconsistencies in the delivery of the initiative across local authorities and compromise the level and quality of provision. It is clear from the evidence received that there is a lack of clarity about circumstances under which the duty to provide free breakfasts would not apply (section 89(2)), in particular about the meaning of the term “unreasonable”. While we are partly assured by the Minister’s evidence on this issue, in view of the strength of evidence from respondents **we recommend that the Minister considers including in guidance the circumstances in which a local authority can determine that the provision of a free school breakfast service is “unreasonable”.**

### **Power to charge for meals**

#### ***Background***

350. Under Part 9 of the Education Act 1996, when providing milk, meals and other refreshments in schools, local authorities and governing bodies are required to charge the same price to every pupil.

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<sup>248</sup> RoP, paragraph 259, 19 July 2012

Section 92 amends the 1996 Act to allow flexible charging arrangements for school meals. Schools and authorities are not permitted to charge more than the cost of providing meals to pupils.

351. The Explanatory Memorandum states:

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.<sup>249</sup>

### ***Evidence from respondents***

352. There was broad support for the provisions relating to flexible charging for meals and the introduction of a cap on charging.

353. Both Estyn, and the WLGA and ADEW expressed strong support for the proposals in the Bill that will allow local authorities to establish flexible charging systems for school meals.<sup>250</sup>

354. Whilst supportive in principle, a number of respondents raised concerns about the administration of flexible charging arrangements and the potential for increased bureaucracy.

355. On this issue, NUT Cymru said “it will be difficult to administer that scheme and there is the possible knock-on effect of whether you will be stigmatising families on low income with this flexible charging.”<sup>251</sup>

356. Governors Wales stated that the proposals are to be welcomed but they were concerned with how the system would be administered. In oral evidence to the Committee, they said:

Flexibility is very important and it is a very interesting proposal that would be welcomed. The concern is the administration side of it within schools. Again, that is something that needs to be looked at how that is going to work and whether it is going

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<sup>249</sup> EM 3.110, pg 30

<sup>250</sup> Written evidence SSO2 and SSO3

<sup>251</sup> RoP, paragraph 355, 27 June 2012

to be onerous and so on. The proposal is very commendable, but the devil is in the detail, is it not?<sup>252</sup>

357. These concerns were echoed by both Rhondda Cynon Taf County Borough Council and LACA.<sup>253</sup>

358. Wrexham County Council Lifelong Learning Department highlighted some concerns that introducing a cap on the amount that can be charged to pupils at the cost of producing that meal may place an additional bureaucratic burden on the provider to calculate the cost of each meal.<sup>254</sup>

359. Carmarthenshire County Council also expressed concerns that the proposals could have negative implications for the service providers. They suggested that the standards and quality of the meals provided in schools may suffer if a catering provider's income is reduced.<sup>255</sup>

360. The City and County of Swansea's Education Department suggested that all costs associated with the provision of school meals should be included when determining the level of charges for school meals.<sup>256</sup>

361. In relation to this, ATL Cymru raised concerns that local authorities, who would have to bear the cost of a flexible charging scheme, may increase the base-price for other children who do not benefit from the scheme in order to recover costs.<sup>257</sup>

362. The Children's Commissioner for Wales, whilst welcoming the proposals for flexible charging arrangements, said that care needs to be taken with regards to the administration of the system. He said:

Non-stigmatising routes to ensure that this flexible benefit happens have to be given hard consideration.<sup>258</sup>

363. Similar points were made by Children in Wales. It also suggested that a benchmark figure be developed in order to avoid possible

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<sup>252</sup> RoP, paragraph 212, 27 June 27 2012

<sup>253</sup> Written evidence SSO12 and SSO11

<sup>254</sup> Written evidence SSO13

<sup>255</sup> Written evidence SSO26

<sup>256</sup> Written evidence SSO27

<sup>257</sup> RoP, paragraph 112, 27 June 2012

<sup>258</sup> RoP, paragraph 126, 11 July 11 2012

discrepancies which may occur nationally, and that the discount is set at a reasonable level to be attractive enough for parents to benefit from a reduced rate for a second child.<sup>259</sup>

364. Concern was raised in evidence that flexible charging for school meals could lead to indirect discrimination and potential litigation from the parents of children that would end up paying more for school meals.

365. Both Rhondda Cynon Taf County Borough Council and Carmarthenshire County Council stated they had concerns that parents of pupils who did not benefit from the flexible charging scheme may challenge a local authority's decision on equality and discrimination grounds.<sup>260</sup>

366. Similarly, LACA said that the ability to charge different prices for the same meal to different groups of children may not be in line with equality legislation.<sup>261</sup>

367. NASUWT Cymru also had concerns that the proposals could lead to litigation and suggested that the system would be “fraught with difficulties”. In oral evidence to the Committee, it said:

I cannot tell you what form the litigation will take, but there needs to be an equality impact assessment of this... to look at how this will affect one group rather than another.<sup>262</sup>

### ***Evidence from the Minister***

368. The Explanatory Memorandum that accompanies the Bill states:

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

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<sup>259</sup> Written evidence SSO23

<sup>260</sup> Written evidence SSO12 and SSO26

<sup>261</sup> Written evidence SSO11

<sup>262</sup> RoP, paragraph 352, 27 June 27 2012

Government is confident it will be of significant benefit [to] parents and children.<sup>263</sup>

369. In commenting on flexible charging for school meals, the Minister said:

What we are trying to do overall in the provisions in relation to school meals is ensure that there is an opportunity for flexible charging, but that local authorities are not able to charge above the cost of the provision of the meals or milk.<sup>264</sup>

370. With regards to concerns raised about the administration of flexible charging arrangements and the potential for increased costs for some pupils, the Minister said:

We have taken the view that we are giving a power to charge flexibly to local authorities...this does not mean that they can levy unreasonable charges. In fact, we would see it as being a way of ensuring take-up by reducing the cost, rather than the other way around. There will be guidance that we will publish that will clarify the element that prevents schools and local authorities from charging more than the cost of providing the meal.<sup>265</sup>

371. When asked if he would consider the suggestion of a benchmark figure relating to the parameters within which a local authority could set its charges for school meals, the Minister said that it would depend on the nature of the benchmark. He would be willing to pursue the suggestion in more detail through the guidance that will accompany the provision in the Bill.<sup>266</sup>

372. In commenting on the concern that the proposals in relation to flexible charging may be discriminatory, the Minister stated:

I do not see why there should be any problem in relation to equalities legislation... What we are doing here is entirely in line with equalities legislation, and offers local authorities the

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<sup>263</sup> EM 3.116, pg 31

<sup>264</sup> RoP, paragraph 117, 9 May 2012

<sup>265</sup> RoP, paragraph 274, 19 July 2012

<sup>266</sup> RoP, paragraphs 276-278, July 19 2012, Children and Young People Committee

opportunity to demonstrate that they are implementing equalities legislation.<sup>267</sup>

### ***Our view***

373. We note that the majority of those giving evidence support the proposals to give powers to local authorities and governing bodies to vary the cost of school meals, in principle. As such, we are generally content with the powers provided in section 92 of the Bill.

374. Notwithstanding the above, we share the concerns in evidence regarding the potential practical difficulties in implementing a system of flexible charging. It is possible that these difficulties may deter local authorities from choosing to operate such a system, and, as a result the policy objective may not be reached. We share the concerns expressed by a number of respondents that there is a potential for inconsistencies in how local authorities administer and deliver flexible charging systems. As such, we welcome the Minister's intention to introduce guidance that will assist local authorities in delivering a flexible charging system.

375. We note the concern raised by some respondents that a system of flexible charging may not comply with equality legislation. However we are assured by the Minister's statement that the Bill is in line with the Equality Act 2010.

## **School-based counselling**

### ***Background***

376. Section 93 requires local authorities to make "reasonable provision" for an independent counselling service and sets out the requirements that must be met by a local authority when making counselling arrangements.

377. The Minister has confirmed that it is the Welsh Government's intention to transfer the specific ring-fenced grant funding for school-based counselling to the RSG.

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<sup>267</sup> RoP, paragraph 274, July 19 2012, Children and Young People Committee



### ***Evidence from respondents***

378. There was general support in evidence for school-based counselling to be put on a statutory basis to protect its provision following the transfer of funding to the RSG.

379. The WLGA and ADEW, NAHT Cymru, NUT Cymru and Governors Wales all expressed general support for section 93 of the Bill.<sup>268</sup>

380. Wrexham County Council's Lifelong Learning Department said that whilst welcoming this particular section of the Bill, they had concerns that authorities would be required to provide counselling services independently of local authorities and schools.<sup>269</sup>

381. The British Association for Counselling and Psychotherapy (BACP) stated they believed there is a need for the Bill in order to maintain the current quality of provision when the current grant for the service is transferred to the RSG. They added:

It is welcomed that the Bill places a duty for local authorities to compile information about the independent counselling services. This will enable the Welsh Government to continue to monitor the extent of counselling provision and the effectiveness of the provision.<sup>270</sup>

382. Estyn also commented on the need for the school based counselling initiative to be protected by legislation and suggested that the transfer of specific grant funding to the RSG would provide greater flexibility for local authorities.<sup>271</sup> The Children's Commissioner for Wales made similar comments in his evidence to the Committee.<sup>272</sup>

383. The Committee received a wide range of evidence from respondents regarding the effect of the transfer of hypothecated grant funding into the RSG on the quality of counselling provision.

384. Save the Children warned that the transfer of funding into the RSG must not affect the level and quality of counselling services currently being provided in schools. They also welcomed the provision in the Bill

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<sup>268</sup> Written evidence SSO3, SSO4, SSO6 and SSO10

<sup>269</sup> Written evidence SSO13

<sup>270</sup> Written evidence SSO15

<sup>271</sup> Written evidence SSO2

<sup>272</sup> Written evidence SSO25

that will allow the future extension of counselling services to other groups of children.<sup>273</sup> These views were echoed by Children in Wales.<sup>274</sup>

385. Carmarthenshire County Council noted their concerns that without ring fenced funding, there is a risk that the provision of school based counselling services may not be honoured by local authorities.<sup>275</sup>

386. The City & County of Swansea's Education Department stated that where specific grant funding is transferred into the RSG, it is vitally important that it is made clear to local authorities that the funding has transferred in full.<sup>276</sup>

387. Some respondents, including Barnardo's Cymru and Children in Wales suggested the need for further clarification on the definition of "reasonable provision" in section 93(1).<sup>277</sup>

388. The Children's Commissioner for Wales also raised concerns about the phrase "reasonable provision", given that the term "reasonable" is difficult to define.<sup>278</sup>

### ***Evidence from the Minister***

389. In commenting on the transfer of grant funding into the RSG, the Explanatory Memorandum that accompanies the Bill states:

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. (...) Without underpinning legislation, there is the risk that local authorities may not continue with these programmes...<sup>279</sup>

390. When asked about the funding that will be available to local authorities for the purposes of providing an independent school-based counselling service, the Minister said:

The money that we are putting in will reflect the cost of continuing to provide counselling to secondary pupils,

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<sup>273</sup> Written evidence SSO19

<sup>274</sup> Written evidence SSO23

<sup>275</sup> Written evidence SSO26

<sup>276</sup> Written evidence SSO27

<sup>277</sup> Written evidence SSO22 and SSO23

<sup>278</sup> RoP, paragraphs 104 to 107, 11 July 11 2012

<sup>279</sup> EM 3.106, pg 29

providing it to year 6 in primary schools, and, potentially, to 16 to 18-year-olds as well.<sup>280</sup>

391. In commenting on the concerns raised about the meaning of “reasonable provision” in section 93(1) of the Bill, the Minister said:

We will expect authorities to apply an objective test for reasonableness. Within guidance, we can certainly give them some expectations around the level of provision, and we can spell out in that that we would expect them to adhere to it.<sup>281</sup>

### *Our view*

392. As with free school breakfasts, we note the rationale put forward by the Minister for transferring the specific ring-fenced grant funding for school-based counselling to the RSG.

393. We welcome the corresponding move to legislate in this area as a means of ensuring that the provision of school-based counselling continues following the transfer of funding.

394. We note that the majority of those giving evidence support the introduction of a statutory duty on local authorities to provide school-based counselling services, in principle. As such, we are generally content with the powers provided in section 93 of the Bill.

395. Notwithstanding the above, we recognise the concern raised in evidence about the potential effect of the transfer of funding on the level and quality of counselling provision.

396. It is clear from the evidence received that there is a lack of clarity about the meaning of the term “reasonable provision” in section 93(1). We welcome the Minister’s intention to produce guidance that will ensure local authorities are clear about the level of provision that would be reasonable to satisfy the requirements of the Bill.

397. We are partly assured by the Minister’s evidence that he is committed to ensuring that school-based counselling programmes continue under the new funding regime. On balance, we are content that the provisions of the Bill provide adequately for this. Our specific

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<sup>280</sup> RoP, paragraph 251, 19 July 2012

<sup>281</sup> RoP, paragraph 283, 19 July 2012

concern in relation to funding for the expansion of the service following the transfer of funding is covered in Chapter 9 of the report.

## **Parents' meetings**

### ***Background***

398. Currently, school governing bodies are required to hold an annual meeting with parents. Section 95 repeals this requirement and places a duty on governing bodies to hold a meeting following a petition by parents, subject to certain conditions being met.

### ***Evidence from respondents***

399. The Committee received a wide range of evidence from respondents regarding the proposed duty on governing bodies to hold a meeting following a petition by parents. Respondents commented, in the main, on the practicalities of the proposed petition system and the appropriateness of the number of parents required to trigger the request for a meeting.

400. There was broad support from respondents for the removal of the current requirement on governing bodies to hold an annual parents' meeting.

401. Both the WLGA and ADEW, and Children in Wales welcomed the commitment to strengthen parental engagement in schools and said they supported the proposals that will allow parents to call meetings with governors.<sup>282</sup>

402. Estyn stated that the current system of the required annual meeting is not working well and felt that the parental right to call a meeting was likely to improve parental engagement and reduce unnecessary burdens on schools.<sup>283</sup>

403. Carmarthenshire County Council said that whilst welcoming these particular sections of the Bill and recognising that the current system is not effective, care must be taken with developing and adopting the alternative approach proposed. They suggested that guidance on the

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<sup>282</sup> Written evidence SSO3 and SSO23

<sup>283</sup> Written evidence SSO2

subjects that should and should not be discussed in a parents' meeting would be valuable to schools and local authorities.<sup>284</sup> Similar views were expressed by Governors Wales who suggested that the Bill should include a right of refusal by the governing body to hold a meeting in certain circumstances.<sup>285</sup>

404. Save the Children raised concern that moving the responsibility to parents to request a meeting could further exclude those parents who are least likely to become involved in their children's education. As such, they suggested that there should be a requirement in the Bill on schools to notify parents of the new arrangements and regularly remind parents of their entitlement.<sup>286</sup>

405. Similar concerns were raised by Barnardo's Cymru, Children in Wales and Michael Imperato.<sup>287</sup>

406. While Governors Wales supported the removal of the requirement to hold an annual parents' meeting it recognised the importance of governing bodies continuing to demonstrate their accountability to parents, for example through the publication of annual reports.<sup>288</sup>

407. The Committee received a wide range of evidence from respondents regarding the number of parents required to trigger the request for a meeting set out in section 95(3).

408. Whilst generally supporting the proposals, NAHT Cymru raised concern about the threshold figures required to trigger a meeting and suggested a sliding scale, ie. a higher percentage of parents needed in smaller schools, is needed.<sup>289</sup>

409. Similarly, ATL Cymru also suggested the inclusion of a descending scale of percentage of parents required to initiate the request for a parents' meeting.<sup>290</sup>

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<sup>284</sup> Written evidence SSO26

<sup>285</sup> Written evidence SSO10

<sup>286</sup> Written evidence SSO19

<sup>287</sup> Written evidence SSO5, SSO22 and SSO23

<sup>288</sup> RoP, paragraph 187, 27 June 2012

<sup>289</sup> Written evidence SSO4 and RoP, paragraph 156, 13 June 2012

<sup>290</sup> Written evidence SSO8

410. Michael Imperato suggested that the threshold in relation to secondary schools may be too high and that mobilising this number of parents would be a “feat of organisation”.<sup>291</sup>

411. NUT Cymru also had concerns with figures outlined in the Bill that will trigger a parents’ meeting. With regards to large secondary schools, NUT Cymru felt that the figure of 10% or 30 (whichever is the lowest) is too high.<sup>292</sup> It went on to say:

At the other end of the size scale, you also have a problem in that you could have a small number of parents in a small primary school with an axe to grind, who could generate a meeting and create huge problems, simply because they have met the threshold in a small school.<sup>293</sup>

412. Finally, NUT Cymru said:

We would feel happy to scrap the parents’ meeting completely and allow parents to make proper use of parent-governors.<sup>294</sup>

413. NASUWT Cymru had mixed views about the proposals for a petition-based system for requesting a parents meeting. They had concerns that small groups that may not represent the views of the majority of parents may use the new system to “bulldoze forward proposals”.<sup>295</sup>

414. In his evidence to the Committee, the Children’s Commissioner for Wales said that he supports the proposals for the petition-based system for requesting a parents’ meeting but that effective consultation and parental engagement will be needed to identify ways of ensuring the effective implementation of such an approach.<sup>296</sup>

### ***Evidence from the Minister***

415. The Explanatory Memorandum states:

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<sup>291</sup> RoP, paragraph 270, 13 June 2012

<sup>292</sup> RoP, paragraph 363, 27 June 2012

<sup>293</sup> *ibid*

<sup>294</sup> *ibid*

<sup>295</sup> RoP, paragraph 365, June 27 2012, Children and Young People Committee

<sup>296</sup> RoP, paragraph’s 83-87, July 11 2012, Children and Young People Committee

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.<sup>297</sup>

416. The Minister reiterated this in oral evidence to the Committee and stated:

...it has become apparent that the process is not working currently...We are trying to give more flexibility to governing bodies while, at the same time, creating a trigger mechanism whereby parents can ask for a meeting if they need it.<sup>298</sup>

417. He went on to state:

There should be an onus on schools to find more innovative ways of engaging with parents. Some of the best practice that we have seen... is when schools have adopted other methods of going out to parents, rather than the traditional timetabled meeting, which can be an intimidating process when you are in an environment being run by professionals.<sup>299</sup>

418. And:

It is down to encouraging schools to find other means of communicating with parents. I point to schools that have done that, and we may need to specify more explicitly in the school improvement guidance the examples of good practice that we have in outreach to parents.<sup>300</sup>

419. Responding to concerns raised that schools and governing bodies may be required to discuss inappropriate issues, ie staff conduct, if a parents' meeting is called, the Minister said:

Governing bodies are clear on their responsibilities in respect of employment issues, data protection and those kinds of

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<sup>297</sup> EM 3.95, pg 27

<sup>298</sup> RoP, paragraph 127, May 9 2012, Children and Young People Committee

<sup>299</sup> RoP, paragraph 287, 19 July 2012

<sup>300</sup> *ibid*

issues, which you would clearly not discuss in an open forum as such. We can put that in the guidance to address that.<sup>301</sup>

### ***Our view***

420. We note the general support in evidence for the replacement of the existing requirement on governing bodies to hold an annual meeting of parents with the ‘petition-based’ system provided for in the Bill. As such, we are generally content with the powers provided in sections 95 and 96 of the Bill.

421. We recognise the concerns raised about the practicalities of a petition-based system and the potential impact that such a system may have on parental engagement. We are assured by the Minister’s evidence on these issues and welcome the Minister’s intention to include direction on how schools can better engage with parents in guidance issued under section 95(13).

422. We share the concerns expressed by respondents regarding the number of parents required to trigger the request for a meeting. In light of this, **we recommend that the Minister reviews the appropriateness of the numbers and percentages required to trigger the request for a parents meeting and considers the alternative suggestion of a sliding scale.**

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<sup>301</sup> RoP, paragraph 289, 19 July 2012



## 8. Part 6 – General

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### Section 98 – Orders and regulations

#### *Background*

423. Section 98 sets out the order and regulation making powers provided in the Bill. Orders made under section 58(2) (directions to make proposals for rationalisation of school places), section 67 (directions to make proposals to secure regional provision for special educational needs), and under paragraph 34(1)(b) of Schedule 5 (transfer of land) will not be exercised by statutory instrument and will not be subject to Assembly procedure.

#### *Evidence from respondents*

424. While the lack of Assembly procedure provided for orders made under sections 58 and 67 was not raised specifically, a number of respondents emphasised the need to ensure that the way in which Welsh Ministers exercise the powers contained in the Bill is subject to an appropriate level of scrutiny.

#### *Evidence from the Minister*

425. In evidence to the Committee, the Minister asserted it was important to retain the ability to issue these orders when the Assembly was not in session. In addition, he questioned whether there would be an appetite in the Assembly to consider orders of this nature.<sup>302</sup>

426. The Minister later went on to emphasise that Ministerial decisions such as these that were not the subject of Assembly scrutiny “will be open to scrutiny subsequently and will be held open to legal process if it is unreasonable.”<sup>303</sup>

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<sup>302</sup> RoP, paragraph 129, 9 May 2012

<sup>303</sup> RoP, paragraph 133, 9 May 2012

### *Our view*

427. We note that the Constitutional and Legislative Affairs Committee has undertaken detailed work and reported on the delegated powers in the Bill, and specifically sections 58 and 67.<sup>304</sup>

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<sup>304</sup> National Assembly for Wales, Constitutional and Legislative Affairs Committee, *Report on the School Standards and Organisation (Wales) Bill*, October 2012

## 9. Financial implications of the Bill

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### Part 2 – Standards

#### Chapter 3 - School improvement guidance

##### *Background*

428. According to the Explanatory Memorandum, the overall estimated cost of the statutory School Improvement Guidance is £1.7 million which would need to be met by the Welsh Government through the School Effectiveness Grant (SEG). It goes on to suggest that there could be additional follow on costs in terms of providing training for schools and on going implementation support, which are estimated at £500,000 per annum (over a 3 to 5 year period).<sup>305</sup>

429. In addition, the Explanatory Memorandum states:

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 policy. 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.<sup>306</sup>

##### *Evidence from respondents*

430. There were few comments from respondents on the cost associated with the school improvement guidance.

431. In commenting on the estimated costs associated with the school improvement guidance, the WLGA and ADEW stated:

It is difficult to say without a clear view of what the priorities are in the school improvement framework. It is assumed that any new burdens on local authorities will be fully funded, and that on-going work will continue to be funded via grants such

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<sup>305</sup> EM 8.24 to 8.26, pgs 64 to 65

<sup>306</sup> EM 8.27, pg 65

as the SEG, and for more targeted work at school level through the [Pupil Deprivation Grant] PDG.<sup>307</sup>

### ***Evidence from the Minister***

432. In the Minister's supplementary evidence to the Committee, he explained that the estimated cost of £1.7 million was for the development and implementation of Statutory School Improvement guidance in one significant priority area. This figure was based on the actual costs to develop and implement the School Effectiveness Framework (SEF).<sup>308</sup> The Minister went on to state:

Actual costs will depend on the number and scope/extent of school improvement strategies under development at a given time.

The £1.7 million is an estimate, by way of example, based on work done around the SEF. New guidance on other issues may not follow the same pattern but the principle exists that if significant costs are placed on schools or local authorities then these are funded by the Welsh Government.<sup>309</sup>

433. The Minister explained that work was underway to identify future priority areas in relation to school improvement. In commenting on when the costs associated with the introduction of statutory guidance in these areas will be known and made available, he stated:

Once this work is complete, we will consider the areas where evidence shows that statutory improvement guidance might be most effective and undertake a detailed impact assessment to support its introduction.<sup>310</sup>

434. And:

... the costs and benefits for any specific statutory guidance will be assessed on introduction. We anticipate such guidance

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<sup>307</sup> Written evidence SSO3A

<sup>308</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>309</sup> *ibid*

<sup>310</sup> *ibid*

may very well be qualitative in nature and therefore of minimal/no financial cost.<sup>311</sup>

435. The Minister provided working assumptions for the on-going implementation support cost of £0.5 million for each priority area. These included the cost of meeting follow-on training for schools.<sup>312</sup>

### ***Our view***

436. We note that the Minister estimated the cost of developing and implementing statutory school improvement guidance to be £1.7 million. According to the Minister this is for one significant priority area as opposed to the total cost.

437. However, the Minister's evidence also states that the actual cost of developing and implementing new guidance may be minimal, depending on the nature of the guidance.

438. We are concerned about the total cost of implementation of the statutory school improvement guidance given the broad range of possible costs provided by the Minister, and that future priority policy areas have yet to be identified.

439. We received no evidence to either challenge or support the costs set out by the Minister. On this basis, and in view of the lack of any firm costings from the Minister, we feel unable to make any recommendations in relation to the financial implications of developing and implementing the school improvement guidance.

440. We do however welcome the Minister's commitment to fund any significant implementation costs for schools and local authorities associated with the school improvement guidance, where necessary.

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<sup>311</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>312</sup> EM 8.26, pg 65

## **Part 3 – School organisation**

### **Chapter 2 - School organisation proposals**

#### ***Background***

441. According to the Explanatory Memorandum, the exact cost of local determination panels (LDPs) would vary according to local circumstances and the complexity of proposals, and as such “would be difficult to quantify”. However, the estimated cost set out in the Explanatory Memorandum is between £500 and £5,000.<sup>313</sup>

442. This estimate includes the cost associated with meetings, allowances and expenses of panel members, clerking costs, administrative support and legal advice.

#### ***Evidence from respondents***

443. There were few comments from respondents on the cost of LDPs.

444. The WLGA and ADEW explained that the cost of LDPs would “be dependent on the specific needs of the proposal”. It went on to state:

...the ability of local authorities to absorb these costs will depend on the number, and complexity of panels that an individual local authority has to establish. This will be subject to on-going discussions with the Welsh Government.<sup>314</sup>

445. Concern was raised by Michael Imperato that the cost associated with LDPs had been greatly underestimated. He stated:

If this process is to be properly prepared, considered, clerked and staffed by able people, the cost would be far higher.<sup>315</sup>

#### ***Evidence from the Minister***

446. In commenting on the suggestion in evidence that the cost associated with the establishment and operation of LDPs would be significantly higher than the estimate provided in the Explanatory Memorandum, the Minister stated:

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<sup>313</sup> EM 8.56, pg 71

<sup>314</sup> Written evidence SSO3A

<sup>315</sup> Written evidence SSO5

Those questioning the estimates appear to have done so because they have misunderstood the nature of the local determination panel process. The local determination panel will not conduct expensive, tribunal style hearings involving legal representation and submissions.<sup>316</sup>

447. The Minister also explained that the estimated costs are based on two or three panel meetings which, according to information provided by local authorities are “not expected to exceed £2,500 but would be considerably less in most cases”. According to the Minister, the remaining costs were “clerking and administrative”, which were not expected to exceed £2,500 and, in most cases were likely to be “considerably less”.<sup>317</sup>

448. In relation to the cost associated with providing LDPs with legal advice the Minister stated:

The projected costs would allow for the provision of some legal advice where needed...

449. And:

Legal advice, if it is required at all, would have to be provided by the local authority. How they do so would be a matter for them.<sup>318</sup>

450. In the Minister’s letter setting out matters he intends to include in the draft School Organisation Code, he makes clear that local authorities will be required to “ensure that all LDP members receive appropriate training before considering proposals”.<sup>319</sup> The Minister goes on to state that local authorities may collaborate to deliver training with a view to providing “possible financial savings”.<sup>320</sup>

451. It is unclear from the Explanatory Memorandum and the Minister’s evidence whether the cost associated with training panel Members, some of whom may be lay-persons, is included in the estimate provided.

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<sup>316</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>317</sup> *ibid*

<sup>318</sup> *ibid*

<sup>319</sup> Written evidence – Additional information from the Minister – School Organisation Code, 21 August 2012

<sup>320</sup> *ibid*

### *Our view*

452. We acknowledge the concerns raised in evidence that the costs associated with local determination panels (LDPs) has been greatly underestimated. While we note the Minister's assertion that this concern is based primarily on a misunderstanding of the nature of LDPs, we remain of the opinion that the Minister's view of how they will operate is overly simplistic and we remain to be convinced.

453. Given the nature of decisions to be made by LDPs, and the potential complexity of cases and level of objections, we believe the Minister has greatly underestimated the time and resource implications associated with their operation. To this end, we believe that the costs associated with LDPs are likely to be significantly greater than the estimate provided by the Minister. On this basis, and in view of our more general concerns in relation to LDPs set out in Chapter 5, **we recommend that when the Minister reviews and reports back on the operation of LDPs, he also reports back on the actual costs of LDPs.**

## **Part 4 - Welsh in Education Strategic Plans**

### *Background*

454. According to the Explanatory Memorandum, the annual administration costs of Welsh in Education Strategic Plans (WESPs) are approximately £468,000. These are, and will continue to be, incurred by the Welsh Government and local authorities.<sup>321</sup> In addition, it is estimated that there will be some additional one-off administration and legal costs of approximately £110,000.<sup>322</sup>

### *Evidence from respondents*

455. In evidence, the WLGA asserted that local authorities would expect any additional costs incurred as a result of the introduction of statutory WESPs to be met by the Welsh Government.

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<sup>321</sup> EM 8.67, pg 72

<sup>322</sup> EM 8.72, pg 73



456. In Estyn's evidence session on its Annual Report on 29 March 2012, it implied that there was currently a lack of capacity of Welsh-medium teachers.<sup>323</sup>

### ***Evidence from the Minister***

457. In the Minister's supplementary evidence he provided further detail on the assumptions supporting the revenue costs associated with WESPs.<sup>324</sup>

458. The Minister explained that the likely maximum average cost incurred by local authorities for conducting surveys to measure demand for Welsh-medium education is estimated at £5,000 per annum. He also pointed out that 15 local authorities were already voluntarily measuring demand regularly and funding these processes themselves.<sup>325</sup>

459. The Minister provided further information on capital implications resulting from the implementation of WESPs and any potential resultant increase in demand for Welsh-medium teachers.<sup>326</sup>

460. In relation to the potential capital implications the Minister stated:

Capital funding implications have already become apparent in the current voluntary WESPs. These plans have included information from local authorities about their bids for 21<sup>st</sup> Century Schools Funding. Also, local authorities' bids for 21<sup>st</sup> Century Schools Funding need to consider the needs of Welsh-medium education....Meetings are currently being held with local authorities to discuss the next stage of the 21<sup>st</sup> century Schools Programme and in particular Welsh-medium was one of the three key policy areas to which priority was given and on which authorities are being re-tested, along with Transformation and School Reorganisation.<sup>327</sup>

461. In relation to the potential additional demand for Welsh-medium teachers the Minister stated:

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<sup>323</sup> Children and Young Persons Committee, CYP (4)-11-12 Paper 1 – HMCI Annual Report 2010-11 paragraph 153

<sup>324</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>325</sup> *ibid*

<sup>326</sup> *ibid*

<sup>327</sup> Written evidence – Additional information from the Minister, 21 August 2012

The supply of newly qualified teachers being recruited by Welsh-medium schools currently meets demand. The number of vacancies within Welsh-medium schools is monitored by the Welsh in Education Strategic Plans (WESPs) and we do not envisage the need for extra teacher training places.<sup>328</sup>

462. The Minister also advised:

The implementation of WESPs will be supported by the use of the Welsh in Education Grant which currently stands at around £5.6 million.<sup>329</sup>

### *Our view*

463. We note that the Minister estimates the on-going revenue costs associated with the administration of Welsh in Education Strategic Plans (WESPs) to be approximately £0.5 million. We acknowledge that, according to the Minister, these would not constitute an additional financial burden on local authorities as, in the main they are already preparing WESPs on a voluntary basis.

464. We note from the Minister's evidence that the costs of implementation of WESPs will be met through the existing Welsh in Education Grant, and that no additional funding will be made available for this purpose. As such, we are concerned about the potential for funds to be diverted from other initiatives supported by the Welsh in Education Grant in order to meet the costs associated with implementing WESPs.

465. In Chapter 6, we recommend that the Minister gives consideration to including in the Bill provision to ensure that any increase in demand for Welsh-medium education is adequately met. On the basis that the Minister accepts this recommendation, **we further recommend that he must ensure that adequate funding is available for this purpose.**

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<sup>328</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>329</sup> *ibid*

## **Part 5 – Miscellaneous School Functions**

### **Free breakfast initiative and school-based counselling**

#### ***Background***

466. According to the Explanatory Memorandum:

- funding for the free school breakfast initiative will be £10.7m, £12.7m and £14.7m per annum for the period 2011-14, which provides for an increase in demand over the 3 year period allowing for continued expansion of breakfast provision;<sup>330</sup> and
- the transfer of funding for school-based counselling will result in administrative cost savings of approximately £29,000.<sup>331</sup>

467. In evidence to the Committee on 9 May 2012, the Minister stated that £4.5 million would transfer to the RSG to fund school-based counselling.<sup>332</sup>

#### ***Evidence from respondents***

468. As outlined in Chapter 7, a number of respondents raised concern about the effect on the quality and level of provision of free school breakfasts and school-based counselling following the transfer of specific ring fenced grant funding to the RSG.

#### ***Evidence from the Minister***

469. In the Minister's supplementary evidence he explained that the free breakfast initiative has been in existence since September 2004 with all schools formally invited to participate in the scheme by January 2007. According to the Minister, "the vast majority of schools that wanted to participate in the scheme had already signed up". He also explained that each local authority has an appointed free breakfast coordinator to manage the scheme on a local basis.<sup>333</sup>

470. In commenting on the transfer of funding, the Minister stated:

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<sup>330</sup> EM 8.118, pg 82

<sup>331</sup> EM 8.107, pg 79

<sup>332</sup> RoP, paragraph 137, 9 May 2012

<sup>333</sup> Written evidence – Additional information from the Minister, 21 August 2012

In finalising the arrangements for the transfer to RSG, the Distribution Sub Group (involving Welsh Government and Local Government officials) have given consideration to the on-going funding required to be transferred into the settlement for 2013-14 and future years along with the distribution arrangements. It is accepted practice by local authorities and the Welsh Government that in some instances moving to a standardised formula for allocating funding to RSG some local authorities may have more funding that they currently receive via a specific grant and others less.<sup>334</sup>

471. In his oral evidence the Minister confirmed that free breakfasts would continue to be monitored via the school census.<sup>335</sup>

472. In commenting on school-based counselling the Minister stated:

The money that we are putting in will reflect the cost of continuing to provide counselling to secondary pupils, providing it to year 6 in primary schools, and, potentially, to 16 to 18-year-olds as well.<sup>336</sup>

473. In commenting on concerns that the level of service may be adversely affected by the transfer of funding, the Minister stated:

Section 94 contains requirements for information about independent counselling services... We can direct local authorities to compile information about the service secured by them and they will need to provide us with that information. So, we have powers on the face of the Bill to follow that through.<sup>337</sup>

### ***Our view***

474. As outlined in Chapter 7, we acknowledge the concern raised in evidence about the potential effect on the delivery of the Primary School Free School Breakfast Initiative and school-based counselling following the transfer of funding from a ring-fenced grant to the Revenue Support Grant (RSG).

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<sup>334</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>335</sup> RoP, paragraph 255, 19 July 2012

<sup>336</sup> RoP, paragraph 251, 19 July 2012

<sup>337</sup> RoP, paragraph 253, 19 July 2012

475. We acknowledge that funding for the free school breakfast initiative provides an additional £4 million to meet an increase in demand over the 3 year period from 2011 to 2014 allowing for continued expansion of breakfast provision, which is to be welcomed.

476. We note that the provision of free school breakfasts will continue to be monitored via the school census, which is available via the Welsh Government's website. However, we also note that, while the census may provide information on the take-up of the initiative, it does not provide information on requests for the provision of a free school breakfast service that have been made but not met under the terms of the Bill.

477. We are concerned that, unlike funding for the free school breakfast initiative, the costs set out by the Minister for school-based counselling make no provision for the expansion of the service either as a result of an increase in demand from those who are eligible under the terms of the Bill, or to other categories of persons, for example, those receiving primary education, subject to the making of regulations by the Welsh Ministers.

## **Power to charge for meals**

### ***Background***

478. According to the Explanatory Memorandum there will be "some initial set up and on-going administration costs" associated with flexible charging for school meals.<sup>338</sup> It goes on to explain that it is not possible to give accurate costings and that the "full impact of schemes would need to be assessed in the light of specific proposals".<sup>339</sup>

### ***Evidence from witnesses***

479. As outlined in Chapter 7 of the report, a number of respondents raised concern about the practical and financial implications of administering flexible charging schemes.

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<sup>338</sup> EM 8.143, pg 86

<sup>339</sup> EM 8.144, pg 86

### ***Evidence from the Minister***

480. In commenting on the concerns raised in evidence about the cost of implementing flexible charging schemes, in the Minister's supplementary evidence he stated:

Increasing the take up of school meals by the use of flexible charging could make a positive contribution towards supporting specific local and national issues such as health, wellbeing and child poverty.

It would be for local authorities or governing bodies with delegated budgets to assess the implications of flexible charging from discounted meals and/or special offers, and then to fund these sales promotions from their budgets based on their contribution to these broader agendas.<sup>340</sup>

481. In responding to the Committee's request for illustrative costs of establishing flexible charging schemes, the Minister asserted:

Given the potential for wide variations in approaches taken by local authorities or governing bodies and their set up costs, any range of illustrative costs provided would be merely speculative and as such unlikely to assist committee members.<sup>341</sup>

482. He added:

The Welsh Government will provide local authorities and governing bodies with guidance in relation to flexible charging which will include information on issues to be considered before starting up, such as costs.<sup>342</sup>

### ***Our view***

483. We share the concerns in evidence set out in Chapter 7 regarding the potential financial implications for local authorities in implementing a system of flexible charging. We welcome the Minister's intention to introduce guidance, including guidance on costs, to assist local authorities in determining whether such a system is viable.

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<sup>340</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>341</sup> *ibid*

<sup>342</sup> *ibid*

## **Total cost of the Bill**

### ***Evidence from respondents***

484. A number of respondents raised general concern about the financial implications of the Bill.

485. The WLGA and ADEW reported that “the overall costs of implementing the Bill, including incidental costs, are the subject of on-going work”. It went on to assert that any additional statutory burdens placed on local authorities would be funded by the Welsh Government, in line with existing protocols.<sup>343</sup>

486. Linked to the above, ATL Cymru suggested that the Minister should undertake further work to accurately assess the cost implications and “make a better judgement on the actual costs.”<sup>344</sup>

### ***Evidence from the Minister***

487. According to the Minister, a “rough assessment” of the total cost of the Bill is approximately £20 million, which includes £14.7 million for free school breakfasts and £4.5 million for school based counselling.<sup>345</sup> This would leave £0.8 million to meet the cost of implementing the remaining provisions, including support for the implementation of the school improvement guidance and a number of other “incidental costs”, for example, the operation of local determination panels (LDPs).

488. In responding to the Committee’s request for an estimate of the total incidental costs associated with the Bill, in his supplementary evidence the Minister stated:

In general, where [incidental] costs are described as modest these are such costs as could readily be absorbed by the body incurring them without harm to its delivery of objectives or financial position. Whilst they do not lend themselves to totalling, I am nonetheless satisfied that their cumulative effect will be similarly modest. Similar considerations arise where

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<sup>343</sup> Written evidence SSO3A

<sup>344</sup> Written evidence SSO8

<sup>345</sup> RoP, paragraph 136, 9 May 2012

costs are not yet quantified due to being scalable according to the resource available...<sup>346</sup>

489. The Minister also provided further information on the financial implications for local authorities of the separate areas of the Bill.

490. He stated:

Overall, I would expect the fiscal impact on local authorities of the Bill provisions to be low and that local authorities would meet this from within their own resources including, in cases such as that relating to school organisation, by redirection of savings realised through the streamlining of related processes. Conversely, where the burdens could be substantial (as in the case of the hypothetical single major school improvement strategy costed within the EM...) I would anticipate providing additional funding.<sup>347</sup>

### ***Our view***

491. We note that the Minister's estimate of the total cost of the Bill is approximately £20 million, of which £0.8 million is available to meet the implementation cost of provisions other than those relating to free school breakfasts and school-based counselling. This figure includes the implementation cost of the school improvement guidance, estimated at £1.7 million for one priority policy area.

492. We have previously made clear our concern about the total implementation cost of the School Improvement Guidance and that the Minister has significantly underestimated the costs associated with the operation of local determination panels. Following on from this, we are concerned that the Minister has underestimated the overall cost of the Bill.

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<sup>346</sup> Written evidence – Additional information from the Minister, 21 August 2012

<sup>347</sup> *ibid*



## 10. Witnesses

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493. The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=1305>

<i>9 May 2012</i>	
Leighton Andrews AM	Minister for Education and Skills
<i>31 May 2012</i>	
Ann Keane	Her Majesty's Chief Inspector for Education and Training in Wales
Meilyr Rowlands	Estyn
Simon Brown	Estyn
Dr Chris Llewellyn	Welsh Local Government Association (WLGA)
David Hopkins	WLGA
Ian Budd	Association of Directors of Education in Wales (ADEW)
<i>13 June 2012</i>	
Gareth Jones	Association of School and College Leaders (ASCL)
Tim Pratt	ASCL
Anna Brychan	Association for All School Leaders (NAHT) Cymru
Graham Murphy	NAHT Cymru
Michael Imperato	Solicitor

<i>27 June 2012</i>	
Dr Philip Dixon	Association of Teachers and Lecturers (ATL)
Dr Alec Clark	ATL
Elaine Edwards	National Union of Welsh Teachers (UCAC)
Rebecca Williams	UCAC
Jane Morris	Governors Wales
Terry O'Marah	Governors Wales
Neil Foden	National Union of Teachers (NUT) Cymru
David Evans	NUTCymru
Rex Phillips	National Association of Schoolmasters Union of Women Teachers (NASUWT) Cymru
Hopkin Thomas	NASUWT Cymru
<i>11 July</i>	
Keith Towler	Children's Commissioner for Wales
<i>19 July 2012</i>	
Leighton Andrews AM	Minister for Education and Skills

## 11. List of written evidence

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494. The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=4092>

<b>Name / Organisation</b>	<b>Reference</b>
Phil McTague, Headteacher, Eirias High School, Conwy	SSO 1
Estyn	SSO 2, 2A
Welsh Local Government Association (WLGA) and the Association of Directors of Education in Wales (ADEW)	SSO 3, 3A
Association of School and College Leaders (ASCL) and Association for all School Leaders (NAHT) Cymru	SSO 4
Michael Imperato	SSO 5
National Union of Teachers (NUT) Cymru	SSO 6
National Association of Schoolmasters Union of Women Teachers (NASUWT) Cymru and Annex	SSO 7
Association of Teachers and Lecturers Cymru (ATL) Cymru	SSO 8
National Union of Teachers of Wales (UCAC)	SSO 9
Governors Wales	SSO 10
Local Authority Caterers Association (LACA)	SSO 11
Rhondda Cynon Taf County Borough Council	SSO 12
Wrexham County Borough Council Lifelong Learning Department	SSO 13
Blaenau Gwent County Borough Council	SSO14
British Association for Counselling and Psychotherapy (BACP)	SSO15
Catholic Education Service	SSO16
GL Education Group	SSO 17

Charity Commission for England and Wales	SSO 18
Save the Children Wales	SSO 19
Parents for Welsh Medium Education	SSO 20
British Humanist Association	SSO 21
Barnardo's Cymru	SSO 22
Children in Wales	SSO 23, 23A
The Church in Wales Education Department	SSO 24
The Children's Commissioner for Wales	SSO 25
Carmarthenshire County Council	SSO 26
City and County of Swansea, Education Department	SSO 27

**Written evidence received from the Member in Charge, Leighton Andrews AM, the Minister for Education and Skills.**

[Letter to the Minister for Education and Skills: 11 May 2012](#)

[Additional information from the Minister: 24 May 2012](#)

[Letter to the Minister for Education and Skills: 24 July 2012](#)

[Additional information from the Minister: 21 August 2012](#)

[Additional information from the Minister - School Organisation Code: 21 August 2012](#)