



Llywodraeth Cymru
Welsh Government

SCHOOL STANDARDS AND ORGANISATION (WALES) BILL

Explanatory Memorandum
incorporating the Regulatory Impact
Assessment and Explanatory Notes

April 2012

SCHOOL STANDARDS AND ORGANISATION (WALES) BILL

Explanatory Memorandum to the School Standards and Organisation (Wales) Bill

This Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the School Standards and Organisation (Wales) Bill introduced by me on 23 April 2012, would be within the legislative competence of the National Assembly for Wales.

Leighton Andrews AM

Minister for Education and Skills
Assembly Member in charge of the Bill

23 April 2012

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PART 1

1. Description

1.1 The School Standards and Organisation (Wales) Bill ('the Bill') sets out a number of proposals that will sharpen the accountability of schools by bringing together, updating and tightening standards and management. The Bill will reform the statutory process for school organisation so that decisions are taken at the local level wherever possible. Mainstreaming several grant funded programmes will improve the streamlining of current processes. Providing parents with the right to call meetings with Governing Bodies will provide a means of ensuring that such meetings are more flexibly offered in order to meet the needs of parents and support more meaningful parental engagement. Local authorities and schools will be given greater flexibility over the pricing of school meals. Lastly local authorities will be accountable for planning Welsh-medium provision by the placing of Welsh in Education Strategic Plans on a statutory basis.

1.2 The Bill also recasts and consolidates existing education provisions and therefore makes progress in line with the development of a Welsh Statute Book.

1.3 The Minister for Education and Skills has made the following statement:

"In my view development of the provisions of the School Standards and Organisation (Wales) Bill has been undertaken with due regard to the United Nations Convention on the Rights of the Child, in accordance with the Rights of Children and Young Persons (Wales) Measure 2011".

2. Legislative background

2.1 The National Assembly for Wales has the legislative competence to make provision for and in connection with School Standards and Organisation by virtue of Schedule 7, subject 5 (education and training) and subject 9 (health and health services) of the Government of Wales Act 2006 (“GOWA 2006”).

2.2 Schedule 7, subject 5 of GOWA is reproduced below:

Education and training

5. Education, vocational, social and physical training and the careers service, Promotion of advancement and application of knowledge.

Exception—

Research Councils.

2.3 Schedule 7, subject 9 of GOWA is reproduced below:

Health and health services

9. Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Exceptions—

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

3. Purpose and intended effect of the legislation

3.1 In seeking immediate improvement in a number of areas the Welsh Government will through the School Standards and Organisation (Wales) Bill legislate in the following areas:

- Intervention in schools and local authorities causing concern;
- School improvement;
- School organisation;
- Welsh in Education Strategic Plans;
- Annual parents' meetings;
- School-based counselling;
- Primary school free breakfast initiative;
- Flexible charging for school meals.

3.2 School standards in Wales are too low and too variable. While examination results have been rising over the last decade, performance lags behind other countries. In 2010 the Organisation for Economic Cooperation and Development (OECD) published its Programme for International Student Assessment comparing the performance of school systems across 65 countries. It was the second time Wales had participated in this study and it was clear that Wales is falling behind. Wales is currently below the OECD average for reading and mathematics.

3.3 The relative underperformance of the school system in Wales is worse for our more able students. Repeated Estyn inspections of schools and local authorities show a large variation in school outcomes: there is excellent school provision in Wales, but there is also systemic failure, with some schools and local authority education services in need of significant improvement. Thematic reviews from Estyn across a wide range of issues show a wide variation in practice across schools in Wales. In February 2011, the Minister for Education and Skills set out a “20 Point Action Plan¹” for Education in Wales to raise standards and narrow the attainment gap. This Bill sets out the legislative components of that action plan to raise school standards in Wales.

Intervention in schools causing concern

3.4 Where schools are falling below the standard, whether it be an issue of educational performance or one of school governance, parents and students expect the appropriate action to be taken. Presently the procedure for local authorities and/or the Welsh Government to intervene in these schools, identified as ‘causing concern’, is set out in various legislation.

¹ Now subsumed under the ‘Improving Schools’ Plan – the National Implementation Plan for 3 to 16 education in Wales

3.5 Currently a school that is causing concern is identified by the local authority as part of their responsibilities for supporting and challenging their schools' performance or by Estyn as part of their inspection process. Having identified that a school is a cause for concern a local authority can issue a warning notice to a governing body under the School Standards and Framework Act 1998 (SSFA 1998) in relation to the following grounds:

the standards of performance of pupils at the school are unacceptably low or are likely to remain so unless the local authority uses its powers of intervention; or
there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice the standards of performance at the school; or
the safety of pupils or staff of the school is threatened; or
the governing body has failed to comply with a provision of an order under section 122 of the Education Act (EA) 2002 (teachers' pay and conditions) that applies to a teacher at the school or that the governing body of the school has failed to secure that the head teacher complies with such provision; or
that the governing body have failed to secure that the head teacher of the school complies with teachers' pay and conditions.

3.6 Should the governing body of the school fail to comply with the warning notice addressing the grounds for concern within a specified timescale the local authority may undertake the following courses of action:

appointing of additional governors;
suspending the right to a delegated budget and/or;
applying to Welsh Ministers to replace the governing body with an interim executive board.

3.7 However, there are at present only a few local authorities in Wales that have issued warning notices to schools in these circumstances. This has led to a situation where too many schools are left in a position of concern for too long without the appropriate early action required.

3.8 This was underlined by Estyn's annual report of 2010/11 in which the Chief Inspector of Education and Training in Wales states "*in many local authorities, a few schools have been allowed to underperform over a long period of time, mainly because authorities do not use the full range of their powers to improve schools quickly enough*". This conclusion is supported by the findings of an evaluation of the impact of local authority intervention and support for schools causing concern undertaken by Estyn in 2009.

3.9 Recent informal consultation undertaken by the Welsh Government with the Welsh Local Government Association indicates that local authorities are reluctant to use their existing powers of intervention because they feel the current legislation to be unclear and ambiguous.

3.10 The law as it currently stands with regard to local authority intervention powers is, as previously mentioned, contained largely in the SSFA 1998. This legislation has over the years been amended resulting in numerous cross references to other enactments making it very difficult for the reader to navigate their way through the powers. Some of those amendments were textual but not all, some of the amendments are quite complex in nature requiring detailed knowledge of various legislation.

3.11 There exists a confusing mixture of trigger points for the use of intervention powers, and as a consequence, it has become unclear and confusing when the respective powers of the local authority and Welsh Ministers to intervene in schools causing concern can be exercised. Simply put it has become increasingly difficult to accurately interpret the legislation resulting in a situation where it is unclear who should exercise their powers first – the local authority or the Welsh Ministers?

3.12 It is essential that local authorities are clear about their powers of intervention and the powers of intervention of the Welsh Ministers in order for them to be used decisively and effectively to bring about improvement in standards of education.

3.13 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;
- 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.

3.14 In addition to this the Bill sets out to strengthen and reform those powers of intervention where necessary.

3.15 The provisions in relation to school intervention within the Bill are drafted to reflect the fact that it is wholly appropriate that the local authority will take action in the first instance. However should the local authority intervention prove unsuccessful or inadequate Welsh Ministers will also have the power to intervene. This reform of the current law draws together in one place all the powers of intervention and provides the local authority and the Welsh Ministers with the same grounds for intervention.

3.16 The clarification, strengthening and reform of the current provisions through this legislation will raise school standards by ensuring that intervention by local authorities and the Welsh Ministers in schools causing concern is carried out in a timely and appropriate way, bringing about improvement in underperforming schools and closure of those schools which are judged to be irredeemable. The Bill will remove the current ambiguity and confusion around the following areas.

- the grounds for intervention;
- the process for intervention;
- the point at which intervention can take place; and

what can be done by way of intervention.

3.17 If local authorities are to be timely and effective in their intervention it must be clear what the grounds for such an intervention are. Therefore the Bill will restate and remove unnecessary over-complication of the grounds.

Ground 1 It will no longer be a requirement for a local authority to demonstrate the standards of performance are 'likely to remain unacceptably low' as is currently the case. The Welsh Government considers the fact that they are already unacceptably low to be sufficient grounds for intervention.

Ground 2 The words 'which is prejudicing, or is likely to prejudice, standards of performance' are removed. This will provide a better basis for local authorities to consider issuing warning notices sufficiently early and before the situation has deteriorated to the extent where it is damaging performance.

Ground 3 The behaviour of pupils at the school or any action taken by those pupils or their parents is severely prejudicing or is likely to prejudice the education of the pupils at the school. This derives from section 62 of the SSFA 1998.

Ground 4 This corresponds to the ground for intervention in section 15(2)(a)(iii) of the SSFA 1998.

Ground 5 This relates to the failure or likely failure of the governing body or head teacher to comply with a duty under the Education Acts and restates the ground for intervention in section 497 of the Education Act 1996.

Ground 6 The governing body or head teacher has acted, or is proposing to act unreasonably in the exercise of his/her functions under the Education Acts. This corresponds to the ground for intervention in section 496 of the Education Act 1996.

Grounds 5 and 6 together with the direction power in section 17 and 28 of the Bill will replace the existing direction power in section 496 (Ground 6) and 497 (Ground 5) of the Education Act 1996. Should ground 5 or 6 exist a local authority may use all of its powers of intervention. As it currently stands the SSFA 1998 only provides fairly draconian powers such as to appoint additional governors, suspend the schools budget or appoint an interim executive board. This means that local authorities currently have no power to simply direct a governing body to do something if the governing body is acting unreasonably or is in breach of its duties. This is inappropriate as it is our intention that local authorities should be the first to take action in schools causing concern.

Grounds 7 and 8 relate to warning notice/s issued by Her Majesty's Chief inspector of Education and Training in Wales under the EA 2005 and these replicate the grounds for intervention in section 15(4) and (6) of the SSFA 1998.

3.18 Similarly the process for intervention and the issuing of a warning notice should any of the above grounds (1-6) exist is also overly complicated. Under current legislation for example there is a requirement to issue a warning notice about a warning notice. Whilst it is good practice to engage with the school at an early stage it is excessive to specify prior dealings as statutory conditions for the issue of a warning notice. These provisions have been simplified to better reflect the fact that the trigger for intervention is the failure on the part of a governing body to respond adequately to a notice.

3.19 Where the present legislation provides no uniform approach to the time limits for intervention action to be taken, the Bill will clarify and simplify this by setting the same window for action by authorities in respect of all powers. It is a flexible window based on the authority keeping the situation under review and requiring it to be satisfied that the issues have been dealt with to its satisfaction or that exercise of its powers would not be appropriate for any other reason before closing the window. The same approach has been applied to the time limits for the powers of intervention of the Welsh Ministers.

3.20 The Bill also contains a new power enabling the local authority to require a weak school to collaborate with another school or to work with a partner on school improvement. This might involve contracting with another party for the provision of advisory services to the governing body; collaborating with the governing body of another school; collaborating with a further education college or creating or joining a federation. This form of collaboration will provide an opportunity for the school to address the grounds for concern and avoid what may be a more serious intervention by the authority.

3.21 The Bill replicates the existing power for the local authority to appoint additional governors however these provisions have been amended so that this power is now the same for local authorities and the Welsh Ministers. Under the SSFA 1998 where local authorities appoint such governors there is a power for the appropriate diocesan authority or the body that appoints foundation governors to appoint further governors. When the Welsh Ministers appoint such governors there is no such power to appoint additional governors. Therefore, the Bill removes this difference so that the power of the appropriate diocesan authority or the body that appoints foundation governors is removed. Where the school is causing concern and there has been a failure in the governance and management of the school it is not appropriate for this power to remain.

3.22 To ensure that local authorities have all the information and help required to interpret the new legislation the Bill will also create a new power for Welsh Ministers to issue statutory guidance on school intervention. Local authorities must follow the guidance unless they have a very good reason for departing from it. The guidance will make clear that local authorities are expected to consider the full range of quantitative and qualitative information available in determining whether a school is a cause for concern..

3.23 Following on from this, the statutory guidance on school intervention will set out clearly the procedures to be followed by local authorities in ensuring that schools

causing concern make the necessary changes as early as possible. The guidance will provide clear advice as to how local authorities and the Welsh Ministers should intervene in a timely, appropriate and consistent way to ensure that underperforming schools can make the required progression. It will incorporate existing guidance relating to warning notices currently set out in the 1999 Code of Practice on LEA/School Relations, thus ensuring that local authorities are clear about the powers that exist and the circumstances in which to use them and encouraging better use of these powers.

3.24 Failure to legislate in this area would prevent a consolidation and clarification of the law in respect of these schools. The law as currently drafted would remain unclear and difficult for local authorities to navigate. Local authorities would remain unclear about their powers of intervention.

3.25 The current failings as identified by Estyn would perpetuate the current ineffectual issuing of warning notices and intervention. Further, Welsh Ministers will not have the necessary powers to issue statutory guidance on intervention in schools causing concern and there will be no corresponding duty on local authorities to comply with the, non-statutory, guidance.

3.26 The Welsh Government considers early intervention in those schools causing concern to be paramount in raising standards in schools in Wales.

Intervention in local authorities

3.27 Chapter 2 of Part 2 of the Bill relates to intervention by Welsh Ministers in the education functions of local authorities. This in itself is not "new law". There are powers in sections 496 to 497A of the Education Act 1996 for the Welsh Ministers to issue directions to local authorities or school governing bodies in certain circumstances. Such directions have the force of law and can be enforced by means of a mandatory order of a court. It seems appropriate that the powers in the 1996 Act should be moved to this Bill so that all intervention powers are located in one place. This will make it much easier for the reader to navigate. Chapter 3 makes that change and also sets out the process that the Welsh Ministers should follow in exercising those powers, as the 1996 Act does not do this.

3.28 The process mirrors that for intervention in schools by clearly setting out the grounds for intervention; the process for intervention; the point at which intervention can take place and what can be done by way of intervention. The grounds for intervention derive from sections 496 to 497A of the Education Act 1996:

Ground 1 The local authority has failed, or is likely to fail, to comply with a duty that is an education function (*section 497 Education Act 1996*).

Ground 2 The local authority has acted, or is proposing to act, unreasonably in the exercise of an education function (*section 496 Education Act 1996*).

Ground 3 The local authority is failing, or is likely to fail, to perform an education function to an adequate standard (*section 497A Education Act 1996*).

3.29 Where the Welsh Ministers are satisfied (either on a complaint from an interested person or otherwise) that one or more of the grounds for intervention exists, the Bill provides for a warning notice to be issued.

3.30 Where Welsh Ministers have the power to intervene in a local authority they may exercise the following powers of intervention:

(a) require the local authority to obtain advisory services (replaces intervention power in section 63 of the Education Act 2002);

(b) require the local authority to use the services of a third party to carry out its functions (section 497A of the Education Act 1996);

(c) require that a local authority's functions are carried out by the Welsh Ministers or a person nominated by them (section 497A Education Act 1996);

(d) if Welsh Ministers consider it expedient a direction made under (b) or (c) may relate to the performance of other education functions in addition to the functions to which the grounds for intervention relate. This replicates the current law in section 497(5) of the 1996 Act. This power might best be used where Estyn placed an authority in special measures due to a failure in a large number of its education functions. Local authorities have a vast number of education functions and Estyn may not have identified a failure in every single education function of an authority. However, the extent of the failures identified may be such that the Welsh Ministers consider that the direction should apply to all of the authority's education functions or to education functions in addition to those which the grounds for intervention related. In those circumstances the Welsh Ministers may not consider it practicable to divorce the many failed education functions from those which have not been identified as having failed. In order to ensure the recovery of the local authority it may not be possible to issue a direction in relation to the failed education functions in isolation from the education functions which have not failed. In the most extreme cases this may result in the Welsh Ministers removing all of a local authorities education functions and vesting them in another person(s) such as commissioners. Therefore, it may also provide an opportunity for Welsh Ministers to direct that the third party/nominee carry out certain education functions to allow the local authority to focus its full attention on those functions to which the grounds for intervention related. In such extreme circumstances it is neither practicable nor desirable for the Welsh Minister to be required to identify a failing in every single education function of a local authority before taking such a step;

(e) give directions to the authority or take any other steps. The taking of steps is new and enables Welsh Ministers to do other things they think might help to deal with the ground for intervention other than making a direction.

3.31 Failure to legislate in this area would prevent the consolidation in one place and clarification of the law in respect of intervention in education bodies, and would remove the scope for placing a process around Welsh Ministers' intervention in local authorities to complement that in relation to intervention in schools.

School Improvement Guidance.

3.32 Good practice teaching and learning processes and techniques are not applied consistently across all schools. This has been found repeatedly in Estyn inspections and thematic reviews and is the major contributing factor to the variations found in school standards (eg examination results) between schools with similar socio-economic inputs. The aim of the Statutory School Improvement Guidance is to accelerate the process of school improvement across Wales and bring more consistent performance across all schools to ensure that all learners can benefit from the most effective teaching and learning and achieve their potential.

3.33 There is evidence from inspections and examination outcomes that some schools in Wales are consistently achieving excellent results for their learners whilst other similar schools, where learners are in similar socio-economic circumstances are not achieving the same results. These differences in school performance have been highlighted by the process of school banding, the Welsh Government's system for the transparent assessment of school performance, ensuring support is targeted where it is needed most. The banding process has been accompanied by a careful analysis of data and evidence about priorities for improvement for the lower performing schools that has been conducted by the Welsh Government in partnership with local authority consortia across Wales.

3.34 The Welsh Government School Standards Unit² is working to develop a systematic methodology to identify best practice and support its effective implementation into other schools. We are also identifying a range of high quality materials and resources to support teachers and help them develop their practice initially focusing on national priorities of literacy, numeracy and reducing the impact of poverty on attainment. Such best practice material will be developed in consultation with local authorities and schools. This will be published on the Learning Wales website from September 2012. We have worked with serving practitioners to ensure that these materials are relevant and engaging so practitioners will use them to improve their teaching. The purpose of the school improvement guidance clauses in this Bill would be to place such guidance on a statutory basis.

3.35 Inspectorate research has suggested that best practice does not spread quickly. Some schools are reluctant to change their approaches, even when they are less successful than other settings. Currently, the Welsh Ministers do not have the power to direct the specific practice or techniques that must be used in a school which chooses to ignore the evidence that the approaches they are using are not providing the best outcomes for their learners. The benefits of having these powers would include earlier intervention and greater consistency of approach..

3.36 Where school authorities consider that there is a good reason not to follow the guidance or decide to implement an alternative policy, they must issue a policy statement setting out how they propose to exercise functions differently.

3.37 If the Welsh Ministers consider that the authority's alternative policy is not likely to improve the standard of education provided at the school to which the policy

² Now known as School Standards and Delivery Division

statement relates, they may direct the school authority to take any action Welsh Ministers consider appropriate to ensure the exercise of functions by the authority in accordance with the school improvement guidance.

3.38 The powers to issue statutory school improvement guidance have been purposely drafted to be broad based. They will enable the Welsh Ministers to issue guidance targeted at a number of levels namely, local authority; governing bodies and head teachers of maintained schools. Guidance may be directed at a specific school or schools in a particular group or individual local authorities working in a regional consortium. Different guidance may be issued on specific topics i.e. education at a particular key stage; guidance will affect consortia regions; local authorities; schools; governing bodies; head teachers; practitioners; and learners.

3.39 Welsh Ministers would wish to use the School Improvement Guidance to set out proven techniques and specify the schools in which it should be used. Examples of this might include specifying the most effective literacy “catch up” schemes, or the most effective behaviour management techniques.

3.40 If the legislation is not made there is a risk that we will not have powers to direct schools to take action that evidence shows would clearly be in the best interests of their learners. This would disadvantage the learners and slow school improvement across Wales.

3.41 There is also an efficiency benefit as publication of guidance on the best school improvement techniques will avoid many schools “reinventing the wheel” or sticking with techniques that others know are ineffective; this will also speed up the school improvement process.

School organisation

3.42 Successful intervention in schools and statutory guidance aimed at driving up standards needs to be underpinned by appropriate local patterns of school organisation. The current process for determining school organisation proposals requires reform so that those patterns are shaped and decided at the local level.

3.43 The SSFA 1998 sets out the basis upon which proposals to establish, alter, change the category of, or close schools can be made, and provides local authorities, the governing bodies of voluntary and foundation schools and other persons with varying powers to make such proposals. The powers apply to mainstream and special schools funded by a local authority. The SSFA 1998 provides for regulations to specify how these powers can be applied and the process to be used..

3.44 There are three key sets of regulations –

The Education (School Organisation Proposals) (Wales) Regulations 1999;
The Education Maintained Special Schools (Wales) Regulations 1999;
The Change of Category of Maintained School (Wales) Regulations 2001.

3.45 There are also two guidance circulars:

Circular 9/99 SSFA 1998 - Organisation of School Places, which describes the procedures for publishing and deciding proposals;
Circular 21/09 School Organisation Proposals, which sets out the policy considerations that proposers need to take into account when developing a proposal and the criteria Welsh Ministers apply in deciding the proposals that they are required to determine.

3.46 The SSFA 1998 provides that local authorities or, as the case may be, governing bodies and other promoters, must publish proposals and give any person the opportunity to object to such proposals. If any objections are received, the proposals must be determined by the Welsh Ministers. The Welsh Ministers may approve the proposals (with or without modification) or reject them.

3.47 The Welsh Ministers have powers under the Learning and Skills Act 2000 (LSA 2000) to bring forward proposals to establish, alter or discontinue post-16 education in schools. The process for publishing and determining these proposals is similar to that relating to proposals made under the SSFA 1998 and is set out in the School Organisation Proposals by the National Assembly for Wales Regulations 2004.

3.48 The current process for making changes to school organisation is as follows:

the local authority, governing body or promoter (“the proposer”) prepares the proposal - collating information, applying the key considerations set out in Welsh Government guidance, and undertaking informal soundings;
the proposer undertakes consultation, as required by law, with key interest groups - this usually involves the issue of a consultation document and the holding of public meetings;
the proposer analyses the responses to consultation and decides whether to proceed with the proposal;
if so, notices are published which set out the proposal and allow 1 month for any individual or organisation to lodge an objection;
if there are no objections the proposer decides whether or not to proceed with implementation and has 3 months in which to make this decision;
if there are any objections, the decision on the proposal becomes the responsibility of Welsh Ministers and the proposer has 2 weeks to submit, to the Welsh Ministers, their responses to the objections;
Welsh Ministers consider the proposal in the light of relevant factors set out in guidance together with the objections, the proposer’s responses, and Estyn’s assessment of the educational merits of the proposal;
Welsh Ministers issue their decision - usually between 4 and 6 months from receipt of the proposer’s response to objections; and
if the proposal is approved the proposer has a legal duty to implement it.

3.49 There are a number of negative consequences arising from the current system.

3.50 Presently, all proposals which receive objections must be determined by the Welsh Ministers. On average, over the last 5 years, this has amounted to 17 proposals per year, and in both 2009-10 and 2010-11 the figure was 22. Given that responsibility for planning and providing school places rests with local authorities and not the Welsh Government, it is considered that decisions should, in the vast majority of cases, be made at the local level rather than by the Welsh Ministers.

3.51 The process for school organisation currently takes too long and the involvement of the Welsh Ministers in every proposal which receives objections adds an unnecessary level of bureaucracy, and sometimes causes significant delay. Such delays significantly hamper the ability of local authorities seeking to make changes which will lead to a better use of the resources available for education. Most determinations made by the Welsh Ministers take several months, starting from the date on which the statutory notice relating to the proposal is published, whilst in some very complex cases, proposals have taken over 6 months from this point to determine.

3.52 Generally speaking, proposals which attract objections (even if relatively uncontentious overall) will take at least 6 months to determine from the point that a decision to consult is taken to the point when the Welsh Ministers issue their decision. Limited changes which shorten the timetable for the lodging and submission of objections by 6 weeks (made through the amendment of existing regulations on procedures) came into effect in March 2011. However, a greater reduction in timescales is considered necessary where opposition to proposals is limited.

3.53 The current legislation, which allows a single objector without a direct interest in a school to cause a referral to Welsh Ministers, is inappropriate. This provision can result in delays and uncertainty for local parents and children directly involved with a school, whether or not they support the proposed change, and this is clearly undesirable.

3.54 The closure of schools which have few or no pupils is subject to the same legislative process as, for example, would be the case with a complex reorganisation of several secondary schools. It is considered that this process is unjustifiably protracted in the case of schools which are no longer educationally or financially viable. In the case of schools with no pupils, the requirement to follow the same legal process as for schools which have pupils on roll risks bringing the whole system into disrepute.

3.55 Whilst many local authorities engage well with stakeholders and explain their intentions clearly when they consult on proposals, the current statutory guidance lacks sufficient detail to ensure that there is consistency in the approach taken to consultation. Furthermore, both proposers and interested parties are sometimes unclear about what constitutes good practice and what local people can reasonably expect from consultation. A school organisation code with which proposers would

have to comply, and which included a set of minimum consultation requirements, would help to bring clarity to, and promote confidence in, the process.

3.56 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 affected in a locality. They will ensure that the vast majority of proposals are determined at the local level and in many instances the process should be swifter.

3.57 Specifically, the Bill introduces the following significant changes to the way in which school organisation proposals are determined:

The Bill provides for the introduction of a statutory Code to deal with consultation and other arrangements, modelled on best practice. 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 with these 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. It is anticipated that the draft Code on school organisation will be laid before the National Assembly, subject to the approval of the Bill, shortly after Royal Assent. The provisions included in the Act, the requirements of the Code and the statutory guidance are expected to come in to force in autumn 2013 and will apply to any school organisation proposal published after that date.

Instead of a situation where all proposals which receive objections are referred to the Welsh Ministers, only those proposals which receive an objection from a local authority (or in the case of a school with a religious character, the relevant religious body) or which are connected solely with the removal or establishment of sixth form provision (in the light of the Welsh Ministers’ statutory responsibilities in relation to post-16 educational provision and funding) will be referred to the Welsh Ministers.

Proposals which receive at least 1 objection from the following affected persons; a school’s governing body, school council, Further Education Institutions (in the case of secondary schools), the appropriate religious body for a school or a trust holding land or property on its behalf, Assembly Member or Member of Parliament, or by 10 or more persons with a direct interest in a school (including pupils, parents and staff) will be referred to a local determination panel (LDP) – bodies set up at the local authority level specifically for this

purpose. These bodies will be comprised of five persons who may either be local authority members without prior connection to a proposal, or independent lay persons. Such persons may be drawn from regional pools set up for the purpose. 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 of scrutiny at a local level by individuals familiar with local conditions.

Proposals which do not receive objections, or where the level of objection is insufficient to trigger referral to the Welsh Ministers or LDPs, will be determined by the proposers.

In the case of schools which have fewer than 10 pupils on roll, the closure process followed will be shorter. There will be no requirement for consultation prior to the publication of statutory notices, and irrespective of whether objections are received, the matter will be determined by the proposer.

3.58 The Bill provides for changes to schools which will require the publication of proposals. These are based substantially on the existing regulations. However, it will in future be possible for a local authority to propose a decrease in the size of a foundation or voluntary school which has no religious character as well as an increase. The Bill will also prohibit a new foundation special school from being established in Wales and will prevent a community special school from becoming a foundation special school – thus ensuring consistency with the existing position in relation to mainstream foundation schools.

3.59 The school organisation provisions are intended to form a coherent approach and would deliver the following policy objectives:

- a greater number of locally determined proposals for reorganisation;
- fewer proposals requiring third party determination as a result of objections;
- where proposals do require third party determination, a process which is much swifter and for the most part conducted at the local level;
- a consultation and determination process which is consistently applied, fully understood and commands public confidence and trust; and
- a bringing together, in one place, of all substantive law on school organisation in Wales.

3.60 Overall the provisions would ensure that where school reorganisation is necessary in order to maximise learning opportunities, improve the quality of provision and create a system of 21st century schools, it happens more efficiently and effectively. In doing so, the proposals will contribute towards securing the best education possible for children.

3.61 Failure to legislate in this area risks continuing with a situation where the Welsh Ministers decide a high proportion of school organisation proposals. The Welsh Government considers this inappropriate and would consider these issues far

better dealt with at a local level. Furthermore, it means that proposals which receive limited local opposition, or which involve the closure of schools with few or no pupils, could be subject to unnecessarily long delays. Finally it would prevent the introduction of a Code on School Organisation which could be used to embed good practice and ensure consistency across Wales.

Welsh in Education Strategic Plans

3.62 The *Welsh-medium Education Strategy*³ and supporting implementation programme sets out the national strategic direction for improving the status and planning of Welsh-medium education. The vision of the Welsh Government is to have an education and training system that responds in a planned way to the growing demand for Welsh-medium education, reaches out to and reflects our diverse communities and enables an increase in the number of people of all ages and backgrounds who are fluent in Welsh and able to use the language with their families, in their communities and in the workplace.

3.63 The Strategy includes five and ten-year targets to ensure more:

- a. seven-year old children being educated through the medium of Welsh;
- b. learners continuing to improve their language skills on transfer from primary to secondary schools;
- c. learners studying for qualifications through the medium of Welsh;
- d. learners aged 16 to 19 studying subjects through the medium of Welsh; and
- e. learners with higher-level skills in Welsh.

3.64 Evidence gathered in the preparation of and consultation upon the draft Welsh-medium Education Strategy in 2009, showed the patchy nature of Welsh-medium and bilingual provision throughout Wales. The evidence indicated that planning for Welsh-medium education was not robust and systematic in a number of local authority areas. The final published Strategy acknowledged that, based on the evidence, there was “...a need for strategic planning to facilitate growth and ensure that there is more coherent development and that needs are considered at the start of policy developments in a coordinated way.”

3.65 In December 2011, local authorities submitted their first Welsh in Education Strategic Plans (WESPs) to the Welsh Government, to detail how each authority will achieve the outcomes and targets set out in the Strategy. The WESPs (which are currently non-statutory) provide the means for the Welsh Government to monitor the way in which local authorities respond and contribute to the implementation of the Welsh-medium Education Strategy. WESPs are considered to be a key vehicle for creating an improved planning system for Welsh-medium education by:

³ Welsh Government (2010) *Welsh-medium Education Strategy* – available at <http://wales.gov.uk/topics/educationandskills/publications/guidance/welshmededstrat/?jsessionid=Yc1lPjYS0hG35WHQvZD8fxTlydmwqGFnkP5vz0MtT6wS82vQfZ4Jl275472671?lang=en>

ensuring that Welsh-medium education is at the heart of local authority planning considerations;
planning for extending provision where needed;
reconfiguring the support service by moving away from the traditional roles of *athrawon bro*⁴, and towards a re-focused training and mentoring service;
ensuring the delivery of Welsh-medium support services on the basis of consortia in the near future;
improving standards and extending the use of Welsh by children and young people; and
demonstrating progress against local measures agreed with local authorities to reflect the specific targets in the Welsh-medium Education Strategy.

3.66 In addition to the key outcomes outlined in paragraph 3.63 Guidelines issued to local authorities for the preparation of the non-statutory WESPs identified two further outcomes:

improved Welsh-medium provision for learners with additional learning needs; and
improved workforce planning and enhanced continuous professional development opportunities.

3.67 In an attempt to formalise planning, the former Welsh Language Board used its powers under the Welsh Language Act 1993 to require local authorities to draw up a Welsh Education Scheme (WES). The WES concentrate to a great extent on ensuring sufficient places for children whose parents choose Welsh-medium education.

3.68 However, despite the introduction and use of WES, the issues with inadequate planning still remain. These WES, although having a statutory basis, have not prompted sufficient change, mainly because of inherent weaknesses. In particular, they were:

- a. introduced as part of a general language scheme rather than through legislation as specific educational schemes;
- b. agreed by an Assembly Sponsored Public Body (i.e. the Welsh Language Board) rather than approved by the Welsh Government;
- c. not aligned with national targets; and
- d. not flexible enough to accommodate new educational policy developments.

3.69 In addition many of the individual WES became obsolete after their original time period as local authorities were slow to prepare and submit revised schemes.

⁴ The Athrawon Bro service is a specialist team of Welsh language teachers working in schools and with teachers

3.70 The Welsh Language (Wales) Measure 2011, amongst other matters, abolished the Welsh Language Board with effect from April 2012. . The WES have, therefore, ceased to exist.

3.71 Other planning systems also sought to bring rigour to planning for Welsh-medium educational provision. For example, the Children Act 2004 requires Children and Young People's plans (CYPPs) to be prepared. The supporting guidance for these stipulated that local authorities should "*set out in the CYPP their intentions in respect of Welsh-medium service provision*". However in practice very little was included in response to this requirement in all but a few plans submitted by local authorities, because of the wide-ranging nature of such plans.

3.72 Overall, the picture is therefore one of catch-up: local authorities attempting to find and allocate the requisite resources for sufficient Welsh-medium school places in an *ad hoc* manner. With some exceptions, it is apparent that the key elements of effective planning are fragile, and indeed in some cases absent.

3.73 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.

3.74 Each WESP must contain:

- the local authority's proposals on how it will carry out its education functions to improve the planning of the provision, standards and teaching of Welsh medium education in its area;
- the local authority's targets for improving provision, standards and teaching of Welsh medium education; and
- a report on the progress made to meet targets set out in previous plans.

3.75 The plan must be submitted to the Welsh Ministers who may approve it (with or without modifications) or reject it and prepare another plan in its place.

3.76 The Bill provides the Welsh Ministers with powers to make regulations about WESPs, to make further provision about:

- the form and content of a plan;
- the timing and duration of a plan;
- keeping a plan under review and its revision;
- consultation during the preparation of a plan;
- the submission of a plan for approval;
- when and how to publish a plan.

3.77 Regulations will also set out how and in what circumstances the Welsh Ministers may require a local authority to carry out an assessment of the demand among parents in its area for Welsh-medium education.

3.78 In addition to the outcomes expected by delivery of the Strategy (and the WESP additional outcomes) above, we expect that the proposals in the Bill would result in:

- the establishment of an improved local authority planning system for Welsh-medium education. The main result of this will be greater coherence and consistency in the provision of Welsh-medium school places to fulfil projected need or demand in each locality and across regions;
- introduction of WESPs as the main mechanism for taking forward the national strategic direction for Welsh-medium education and providing accountability to Welsh Ministers;
- publication of regular annual data and reports on progress on national targets for Welsh-medium education by local authorities;
- more opportunities for learners to access Welsh-medium education;
- and
- more learners with higher-level skills in Welsh.

3.79 Should Welsh in Education Strategic Plans not be placed on a statutory footing, there would be no effective means of enforcement on local authorities to prepare and implement a Plan. As a result, it is likely that the fragmented and reactive approach to the planning and provision of Welsh-medium education would continue. Additionally a statutory planning system for Welsh-medium education (Welsh Education Schemes under the Welsh Language Act 1993) would be replaced by a non-statutory system.

3.80 Subject to the views of the Assembly and the approval of the Bill, we anticipate that regulations would come into force in December 2013, and that it would be a statutory requirement for local authorities to submit WESPs for implementation from 1 April 2014 in compliance with the regulations.

Annual Parent Meetings

3.81 There are processes within schools that the Welsh Government considers to be burdensome or unnecessary; they will be removed or amended to meet the commitment to redirect resources to the front line.

3.82 The current requirement for governing bodies to hold an annual meeting with parent/carers is an area the Welsh Government considers unnecessary and burdensome. Whilst it is important that parents have the right and ability to engage with the governing body of their school the requirement to have such a meeting arranged every year, even when not needed or in the main not attended, is considered overly burdensome for governing bodies.

3.83 For some years the Welsh Government has received representations from stakeholders requesting that the annual meetings with parents/carers should be abolished for these very reasons.

3.84 However parents are major stakeholders in the school community who have a clear and strong interest in their child's education, so to completely remove the right of parental access to school governors would clearly be wrong. The Welsh Government is therefore committed to ensuring that governing bodies actively engage with parents and remain accountable by providing them with information and opportunities to discuss and have an input into the way schools are run.

3.85 Currently parental engagement can be achieved in a number of ways. School governing bodies are required in law to provide parents with an annual report. This includes information such as comparative reports on school performance at the end of Key Stage assessments published by the Welsh Ministers, attendance and absence figures and information about the curriculum and the organisation of the school and teaching methods.

3.86 Head teachers are also required to provide parents with a report on their child's progress including details of their child's achievements and progress in each area of learning. Schools also have to provide a school prospectus which gives parents general information about the school such as pupil numbers, policies and information on performance. As well as this written information, governing bodies are also required to hold an annual meeting with the parents of registered pupils. The purpose of that meeting is to provide parents with an opportunity to discuss with the governors, the manner in which the school is, or to be, conducted and of any other matter relating to the school.

3.87 In addition to these statutory requirements schools will often arrange for informal 'evenings' where parents/carers can meet members of staff to discuss their child's progress.

3.88 Regulations surrounding Annual Parents' Meeting have some degree of flexibility as to when a meeting is held during the school year, but meeting dates are set at the discretion of the governing body and may not be beneficial or timely for parents who may wish to discuss a specific matter with the governing body at the time it occurs. The annual parents' meeting may be planned for later in the school year, in which case the issue at hand and any discussions related to it may therefore lose impact.

3.89 The annual parents' meeting involves a time commitment from the governors, including school staff who are also governors, and the clerk to the governing body to take any minutes. There may also be a time commitment for someone, possibly a caretaker, to set out the room for the meeting and make other practical arrangements.

3.90 Representations received by the Welsh Government indicate that in many schools the parent governors attending the annual meeting outnumber the parents. Evidence suggests that for whatever reason, many parents seem to be indifferent to the work of the governing body and that they judge the school by the experiences of their children rather than the more abstract things, such as the issues covered in the governors' annual report or the general conduct of the school.

3.91 However, where they do attend these meetings it provides an opportunity for the governing body to discuss issues and canvass the views of parents. It also gives a stronger voice and a direct influence over what is happening in the school and what the school is doing for parents and pupils.

3.92 The Welsh Government has carefully considered the position of Annual Parents Meetings. Whilst it is important that parents have access to the governing body it is just as important that these meetings are timely and sought after by parents. Under the current arrangements this is clearly not the case and in response to this the Bill proposes the following:

Whichever is the lower of the parents of 10% of registered pupils or the parents of 30 registered pupils would need to make a request for 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 Welsh Ministers will issue statutory guidance on these proposals.

3.93 The benefit of these proposals is that there would be no obligation on governing bodies, unlike at present, to hold a meeting with parents unless there was a request for such a meeting by a set quorum of parents. Based on current evidence from discussions with local authority officers and correspondence received, it is probable many schools would not be asked for such a meeting. However, in schools where there is a major issue such as staff redundancies or leadership and staffing problems, this provision would make it possible for parent to discuss how these circumstances impact on their children's education as and when they are most relevant.

3.94 Failure to legislate in this area would mean the continuation of the current system for governing bodies, having to hold or arrange a meeting every year. It would also result in parents not always having the access to a timely opportunity to address issues of concern with school governors.

3.95 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.

Reducing Bureaucracy

3.96 The following proposals within the Bill aim to reduce bureaucracy, streamline processes and give greater flexibility.

3.97 The Front Line Resources Review, completed in June 2011, was designed to reduce the administrative burden across the education system, in order to release funding for front line delivery. The Front Line Resources Review One Year on Report suggested that some specific grants be amalgamated but also recommended more

general work to simplify the grants system and transfer some grants into the Revenue Support Grant (RSG) as appropriate.

3.98 The 'Protocol on Hypothecated Grants' between the Welsh Government and the Welsh Local Government Association contains an expectation that ring-fenced grants will operate only for a limited period whilst new services are being set-up and, that over time, the funding will move to the RSG.

3.99 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 breakfasts and school counselling, to the RSG. These demand led budgets currently require continual assessment by the Welsh government of all 22 local authorities' spending in these areas and yearly payments based upon this. 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.

School Based Counselling

3.100 Following the publication of the National Strategy for School-based Counselling in 2008, counselling services have been established in each local authority area. Currently a service is provided in all secondary schools managed by the local authority. The service is intended to support all young people receiving secondary education and also pupils in their final year of primary education, irrespective of whether they are registered pupils at a school or not.

3.101 Counselling is one of a range of services that help to support the health, emotional and social needs of pupils and leads to a healthy school culture. Early and easy access to counselling in schools can prevent mental health problems developing or becoming more serious, and can build up trust and confidence to enable young people to access more specialist services if required. The school counselling service support is available in secondary schools and to those in their final year of primary education.

3.102 The independent evaluation of the Welsh School-Based Counselling Strategy July 2011 (Social Research: Doc Number 23/2011)) recommended that the Welsh Government consider rolling out the Strategy to all pupils receiving primary education (year 5 and below) in an age appropriate form. The Welsh Government is currently considering school-based counselling in primary schools (year 5 and below).

3.103 To enable the Welsh Government's policy intention to be achieved on the transfer of the specific grant funding to the RSG the Bill will make the following provision:

local authorities will be required to make reasonable provision for an independent counselling service to be provided to: pupils receiving secondary education and year 6 primary education at a school in its area; other persons aged 11 to 18 who belong to the authority's area and such other persons receiving primary education as the Welsh

Ministers may set out in regulations.

the counselling service must be independent, although respectful of the ethos, of the school that provides education to the young person receiving counselling.

Welsh Ministers will be able to issue guidance regarding the provision of school-based counselling to which local authorities must have regard.

local authorities will be required to provide a counselling service on the site of each school they maintain that provides secondary education. They may provide additional counselling services at other locations should they wish to do so.

Welsh Ministers will be able to make regulations requiring local authorities to provide an independent counselling service at other locations. For example, to require a counselling service to be provided on the site of a primary school.

Welsh Ministers will be able to request information about the counselling service from the local authority;

3.104 Duties on local authorities within the Bill will ensure that young people who receive secondary education and year 6 primary education continue to have access to this type of support within a framework of safe and effective practice. The service will continue to be available to all young people aged 11-18 irrespective of the kind of school that they attend or whether they are registered at a school. It would therefore include persons who attend out of school provision, or are home educated or attend an independent school. This will also include students in further education who may not be able to access counselling via their further education provider.

3.105 Provision within the Bill is also made to enable the Welsh Ministers to give effect to any future policy intention to extend counselling services to other categories of persons, for example primary pupils in year 5 and below.

3.106 Failure to legislate in this area could result in the transfer of this grant into the RSG without the necessary duty being placed upon local authorities. This duty will ensure the continued delivery of school based-counselling. Without underpinning legislation, there is the risk that local authorities may decide not to continue with the programmes or reduce activity. This would have a negative impact on the ability of children and young people to access and benefit from the provision..

Primary School Breakfast Initiative

3.107 The primary school free breakfast initiative was first introduced in September 2004 and was gradually rolled out across local authorities, with all schools being invited to participate in the scheme by January 2007. The Welsh Government made a commitment to provide for all children of primary school age registered in maintained primary schools in Wales to have a free, healthy breakfast at school each day, giving them best possible start to the day.

3.108 Given that the vast majority of schools that want to participate have already signed up (71% of schools are currently involved), the number of additional schools signing up each year has gradually decreased since 2007-08. It is anticipated that this decrease will continue and as such the Welsh Government's intention is to transfer the specific grant funding to the RSG. The Welsh Government however still remains committed to the free breakfast initiative; therefore the Bill will propose the following:

That local authorities be required to provide free breakfasts on each school day at a primary school it maintains if the governing body of the school makes a written request for breakfasts to be provided and 90 days have passed since the local authority received the request. The period of 90 days will give the local authority sufficient time to arrange the provision;

The local authority's duty to provide breakfasts will not apply (or will cease to 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. The local authority would be required to notify the governing body in writing of any refusal to provide breakfasts, or if it is going to stop providing breakfasts;

Pupils will be entitled to free breakfast if the local authority's duty to provide breakfast applies and a request for breakfast is made to the local authority by, or on behalf of, the pupils;

Local authorities and governing bodies must have regard to any guidance issued by the Welsh Ministers. Any such guidance would build on the current guidance circular no. 021/2008 document 'Primary School Free Breakfast Initiative' which currently forms part of the terms and conditions for operating the specific grant scheme;

Local authorities will have flexibility to decide the form of the breakfast content subject to compliance with any regulations made under the Healthy Eating in Schools (Wales) Measure 2009 to regulate food and drink provided to pupils in maintained schools.

3.109 As with the school-based counselling provisions, failure to legislate in this area could result in the transfer of this grant into the RSG without the necessary duty being placed upon local authorities. Without underpinning legislation, there is the risk that local authorities may decide not to continue with the programmes or reduce activity, including not allowing new schools to become involved. This would have a negative impact on the ability of children and young people to access and benefit from the provision.

Flexible Charging for School Meals.

3.110 In providing milk, meals and other refreshments in schools local authorities are allowed to charge for that provision. However under current legislation where they do charge they must charge the same price for every person for the same quantity of the same item.

3.111 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 to encourage the take up of school meals. Informal discussions with local authorities have shown they would welcome the flexibility over school meal pricing.

3.112 Such flexible charging could be used by an authority to provide a reduced price for:

- pupils within larger families where more than one pupil is in receipt of school meals.
- younger pupils to encourage the take up of school meals,
- new pupils at school for a limited period.

3.113 The Welsh Government considers the provision of a healthier school meal for learners important in the context of several initiatives.

- Appetite for Life – the Welsh Government’s agenda for improving the food and drink provided in schools;

- The Healthy Eating in Schools (Wales) Measure 2009 includes a provision ‘Promotion of meals in schools and other educational establishments’ which requires local authorities/governing bodies to encourage the take-up of school meals;

- Child Poverty Strategy.

3.114 Therefore the Bill makes provision to give local authorities flexibility over the pricing of school meals. In addition the EA 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. Currently there is no cap on how much a pupil can be charged.

3.115 The Welsh Government can foresee no reason that one group of pupils could or should be charged a higher price for a school meal in order to subsidise a lower charge to another group of pupils. This provision would mean that local authorities and schools must not charge a price that exceeds the cost of providing the meal.

3.116 This change in pricing has no effect on the provision of free school lunches (or free milk) to eligible pupils.

3.117 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 Government is confident it will be of significant benefit to parents and children.

4. Consultation

White Paper

4.1 The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement the Department for Education and Skills on the 10th October 2011 issued a White Paper on the School Standards and Organisation (Wales) Bill 2012. The White Paper invited comments on each of the proposals for the Bill and was published on the Welsh Government website. The department also produced both children's and young person's versions. These documents are available on the Welsh Government website at: <http://wales.gov.uk/consultations/education/wms/?lang=en&status=closed>

4.2 The period for responses ran for twelve weeks and concluded on January 5th 2012. In total we received 342 responses to the individual proposals from 72 responders. The response to the White Paper was largely positive with the majority of the responders broadly in agreement with the proposals.

4.3 The following is a breakdown of those that responded to the White Paper based upon the questions asked.

61% agreed with all or most of the proposals
29% agreed with some / disagreed with some of the proposals
10% disagreed with most or all of the proposals

4.4 The 72 responders can be categorised as follows:

| | |
|--|----|
| Local Authorities | 10 |
| Representative Bodies | 27 |
| Unions | 7 |
| Schools and Further Education Institutions | 6 |
| Charities | 9 |
| Health Sector | 2 |
| Individuals | 9 |
| Other | 2 |

4.5 The majority of the questions raised by respondents sought clarification to some elements of the proposals or suggested minor changes to the specific details of the proposals. The Welsh Government has considered all of the responses in detail and where it was appropriate changes have been incorporated into the Bill.

4.6 There were a number of questions regarding the details of the proposals for schools causing concern, school improvement and school organisation. The legislation for each of these areas will be supported by guidance. The questions raised during the consultation will be considered during the development of the guidance, which will where appropriate be subject to further consultation.

4.7 The Welsh Government has considered the suggestions made for revising the thresholds required for parents to call a meeting. The Welsh Government has now concluded that there should be the same thresholds applied to all schools to make it a fair and straightforward target for parents to achieve.

4.8 The detailed Welsh Government response to the White Paper is available to view at:

<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/schoolstandardsbill/?lang=en>

Other consultation

4.9 Prior to the publication of the School Standards and Organisation (Wales) Bill White Paper, separate consultation has also taken place in relation to the school organisation and WESP proposals.

4.10 The principles underlying the provisions on school organisation have been subject to extensive consultation with stakeholders. A detailed consultation document on the potential legislative changes was issued on 28 November 2010. The document set out the current process and the rationale for change and gave a breakdown of most of the specific changes which were proposed. The consultation paper asked a series of questions about particular aspects of the proposals as well as giving the opportunity to comment more generally. A separate questionnaire was produced for the use of children and young people.

4.11 The consultation document was sent to a number of organisations, including the Welsh Local Government Association (WLGA) and all local authorities, diocesan education authorities, the Children's Commissioner, all foundation school governing bodies and a 10% sample of all other schools. The document was also made available on the internet.

4.12 In addition officials held seminars and meetings with representatives of the local authorities, the diocesan education authorities and the Children's Commissioner.

4.13 The consultation received 45 responses of which 13 were a response to the children and young people's questionnaire. Around half of the responses to the main consultation were from local authorities, other respondents included the WLGA, Welsh Language Board, teachers unions, Catholic Education Service, Governors Wales, representatives of foundation schools and members of the general public.

4.14 Most responders recognised the need for change and supported most aspects of the proposals, whilst suggesting minor modifications to matters such as timings. However, in relation to the local decision maker issue, local authorities and the WLGA generally favoured local authority executives being allowed to take all of the decisions. There was a considerable divergence of opinion in relation to the proposed accelerated process for very small schools, with some respondents believing that this approach was unfair. Foundation school representatives were opposed to all aspects of the proposals which they perceived as making it easier for

local authorities to alter or close foundation schools.

4.15 In the light of the consultation responses, a number of amendments were made to the detail of the proposals. In addition, the Welsh Government considered afresh the proposals for local decision maker and the accelerated procedures for very small schools. The concerns and contrary views expressed by some respondents notwithstanding, it was concluded that the advantages of the proposals outweighed the disadvantages.

4.16 In relation to the proposals on WESPs: The draft Welsh-medium Education Strategy was subject to a full 12-week formal consultation process in 2009. In general, the introduction of a more systematic planning system under the auspices of the Welsh Government was welcomed.

4.17 In addition to the consultation on the Strategy, a separate consultation was also issued in 2009 on assessing parental demand for Welsh-medium education. The consultation asked respondents to give their views on placing a statutory requirement on each local authority to conduct surveys amongst parents in order to discover the need for Welsh-medium education, and to respond positively in meeting the needs identified. Respondents were generally in favour of imposing requirements on local authorities to measure demand. However, respondents noted that specific guidelines or conditions should be considered, especially in relation to local circumstances.

4.18 The consultation documents and responses can be found on <http://wales.gov.uk/consultations/education/wms/?lang=en&status=closed>

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

the person upon whom, or the body upon which, the power is conferred;
 the form in which the power is to be exercised;
 the appropriateness of the delegated power; and
 the applied procedure (affirmative, negative, no procedure), if any, together with reasons why it is considered appropriate.

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|----------------|---|--|--|
| Section 39 Power to issue a statutory school organisation code | Welsh Ministers | Statutory Code | Setting out requirements in a Code rather than on the face of the Bill or in regulations will enable the use of language more easily understood by interested parties. Provisions will be based on best practice and may be developed over time. A Statutory Code will enable developments in best practice to be more easily incorporated | Statutory Procedure as set out in section 39 of the Act. | It is considered appropriate that provisions included in the code and in accordance with which affected bodies must act, should be laid before the National Assembly. The procedure is set out on the face of the Bill and mirrors that in laying the Codes on School Admissions and School Admission Appeals. |
| Section 57(3) Power to | Welsh | Order | The relevant date included in | Negative | Amendments to the date are an |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|-------------|---|---------------------|---|
| make an order changing the relevant date for the determination of whether a school's number on roll makes it a small school | Ministers | | the Bill is linked to the annual school census date. Should this change, it is appropriate that the Welsh Ministers have the means to ensure that legislation also changes. | resolution | administrative detail and unlikely to be controversial. |
| Section 87(1) Power for the Welsh Ministers to make Regulations assessing demand for Welsh medium education | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding how a local authority is to assess demand for Welsh medium education and is unlikely to be controversial. |
| Section 88(2)(a) Power for Welsh Ministers to make Regulations in connection with the form and content of a Welsh in education strategic plan. | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the form and content of a Welsh in education strategic plan and is unlikely to be controversial. |
| Section 88(2)(b) Power for Welsh Ministers to make Regulations in connection with the timing and duration of a Welsh in education | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the timing and duration of a Welsh in education strategic plan and is unlikely to be controversial. |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|-------------|--|---------------------|--|
| strategic plan. | | | | | |
| Section 88(2)(c) Power for Welsh Ministers to make Regulations in connection with keeping a Welsh in education strategic plan. | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the review of a Welsh in education strategic plan and is unlikely to be controversial. |
| Section 88(2)(d) Power for Welsh Ministers to make Regulations in connection with the consultation during the preparation and revision of a Welsh in education strategic plan under review and its revision. | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the consultation on a Welsh in education strategic plan and is unlikely to be controversial. |
| Section 88(2)(e) Power for Welsh Ministers to make Regulations in connection with the submission of a Welsh in education strategic | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the submission of a Welsh in education strategic plan for approval to the Welsh Ministers and is unlikely to be controversial. |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|-------------|---|---------------------|---|
| plan for approval. | | | | | |
| Section 88(2)(f) Power for Welsh Ministers to make Regulations in connection with when and how to publish a Welsh in education strategic plan for approval. | Welsh Ministers | Regulation | The main duties are set out on the face of the Bill. There will be a need to amend this detail over time and on a regular basis in response to evidence based needs. | Negative resolution | The detail is technical regarding the publication of a Welsh in education strategic plan for approval to the Welsh Ministers and is unlikely to be controversial. |
| Section 88(3) Power for Welsh Ministers to make Regulations in connection with the preparation of a joint Welsh in Education Strategic Plan by two or more local authorities | Welsh Ministers | Regulation | The regulations will make provision for enabling local authorities to prepare and submit a joint plan. This will be undertaken in order to reflect collaborative working between local authorities. Any such regulations may also modify provisions in this Part of the Bill which refer to requirements on individual local authorities. However, that power is technical and does not allow the Welsh Minister to create new policy or amend the duties set out | Negative resolution | The detail is technical regarding the preparation of joint Welsh in education strategic plans and is unlikely to be controversial. |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|-------------|---|---------------------|--|
| | | | on the face of the Bill. | | |
| Section 93(1) (d) Power to make Regulations extending the local authority's duty to make reasonable provision for independent counselling services to other persons receiving primary education. | Welsh Ministers | Regulation | School-based counselling is being piloted in primary schools. Regulations will enable the Welsh Ministers to respond to any future evidence based need. | Negative resolution | The main duties are set out on the face of the Bill. It is considered appropriate to give the Welsh Ministers the flexibility and the means to respond swiftly to future evidence based needs in the primary sector. The detail is unlikely to be controversial. |
| Section 93(5) Power to make Regulations requiring the local authority to provide independent counselling services at other locations. | Welsh Ministers | Regulation | Regulations will enable the Welsh Ministers to respond to any future evidence based need. | Negative resolution | The main duties are set out on the face of the Bill. It is considered appropriate to give the Welsh Ministers the flexibility and the means to respond swiftly to future evidence based needs. The detail is unlikely to be controversial. |
| Schedule 1 Paragraph 17(2) Power for the Welsh Ministers to make regulations in | Welsh Ministers | Regulation | The grounds for intervening in a school and the power to establish an interim executive board are set out on the face | Negative | The detail is technical regarding the transition to a normally constituted governing body and is unlikely to be controversial.. |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|--|---------------------------|-------------|---|------------------------|---|
| connection with the transition from an interim executive board to a normally constituted governing body | | | of the Bill. Regulations under this power will simply set out the technical arrangements for when the interim executive board has concluded its business, and a normally constituted governing body is to take over the governance and conduct of the school. | | |
| Schedule 2 paragraph 26 Power to add, delete or amend specified alterations | Welsh Ministers | Order | The types of alterations to schools which require the publication of proposals are liable to change over time as policy develops. An order making power would enable the Act to be amended without the need for new primary legislation. | Affirmative resolution | It is considered appropriate that changes made to primary legislation are approved in plenary. |
| Schedule 5 paragraph 40 Power to make Regulations in connection with the implementation of proposals to change a school's category in respect of the | Welsh Ministers | Regulation | The issues addressed in any regulations made under this power would be wholly technical in nature and are matters which are currently set out in regulations. | Negative | The detail is technical regarding the implementation of a change of category and consequential changes to the governing body and is unlikely to be controversial. |

| Section : | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|------------------------|--------------------|------|-----------------|-----------|----------------------|
| government of a school | | | | | |

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so; the exact nature of this consultation will be decided when the proposals have been formalised.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at Section 7.

6.2 A cost benefit assessment is included at Section 8.

6.3 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

PART 2- REGULATORY IMPACT ASSESSMENT

7. Options

Intervention for Schools causing concern

Option 1: Do Nothing - Not to consolidate, clarify and reform existing provisions

7.1 Estyn has identified that many local authorities are not using their full range of powers to improve schools quickly enough and some schools are left to underperform over a long period of time. Only a few local authorities have issued warning notices in these circumstances. Informal consultation with the Welsh Local Government Association suggests that local authorities perceive their current powers to be unclear and ambiguous. The current criteria for issuing warning notices dissuade local authorities from issuing them sufficiently early. There is currently no power for Welsh Ministers to issue statutory guidance to schools and local authorities to effect better and more consistent practice in relation to intervention in schools causing concern.

7.2 Doing nothing will not change the poor practice that Estyn has identified whereby local authorities are not using their full range of powers to ensure the rapid improvement of underperforming schools.

Option 2: Do Minimum - To consolidate and restate the existing provisions

7.3 Consolidating and restating existing provisions will provide clarity to local authorities and Welsh Ministers on the powers that currently exist and the circumstances in which they can be used.

7.4 However, it will not change the current position where the criteria for issuing warning notices dissuade local authorities from issuing them sufficiently early.

7.5 As now there would be no power for Welsh Ministers to issue statutory guidance on schools causing concern which local authorities will be required to follow and which would affect better and more consistent practice in relation to the support of and intervention in schools causing concern.

Option 3: To consolidate, clarify and where necessary reform existing provisions

7.6 Consolidating, clarifying and reforming existing provisions will make it easier for local authorities to navigate the law in relation to schools causing concern. Local authorities will be clear about their powers of intervention and the powers of Welsh Ministers and the circumstances in which they can and should be used.

7.7 Broadening the criteria for issuing warning notices will provide a better basis for local authorities to consider issuing warning notices sufficiently early and before issues of management and governance have a detrimental impact on school standards.

7.8 Welsh Ministers would have the power to issue statutory guidance to schools and local authorities on schools causing concern which local authorities would be required to follow unless there were very good reasons to depart from it. This will encourage better use of local authorities' powers of intervention leading to more consistent, timely and effective practice and more rapid improvement of schools causing concern.

School Improvement

Option 1: Do nothing

7.9 Under this option, no legislative action would be taken. School improvement strategies currently under development including high reliability teaching strategies and professional learning communities will continue to be implemented under the School Effectiveness Framework, on a non-statutory basis. Although future school improvement priorities delivered through the SEF will be better informed by School Standards Unit⁵ stock takes, there is a danger that this approach could simply maintain the status quo.

7.10 In summary, taking the 'Do Nothing' option would contradict the commitment made by the Minister for Education and Skills to drive up school improvement and introduce challenge on a national basis. This option could:

- impact upon the delivery of the Minister's "20 Point Action Plan⁶", if the plan is not underpinned by a statutory framework for school improvement;
- contribute to the continuing gap in educational performance (if there is no statutory, standardised approach to school improvement and school self-evaluation);
- further isolate leading sector practice (identified as an urgent SSU priority) if schools are not directed to adopt proven school improvement strategies, including professional learning communities;
- dilute the impact of comparable provisions within the Bill to issue statutory guidance in relation to formal intervention in schools, which could be reinforced by statutory school improvement powers.

Option 2: Do Minimum

7.11 This option provides scope for the Welsh Minister to influence school improvement using existing legislation by issuing an order in relation to certain aspects of the curriculum and making regulations in relation to teacher training.

7.12 In relation to the curriculum, the Welsh Minister can currently make an order under section 108 of the 2002 Act in respect of prescribing teaching methods and teaching materials. Local authorities (LAs) also have duties in relation to planning the local curriculum. Using existing powers, the Welsh Minister could make an order

⁵ Now known as School Standards and Delivery Division

⁶ Now subsumed under the 'Improving Schools' Plan – the National Implementation Plan for 3 to 16 education in Wales

under section 108 to achieve a policy objective e.g. in terms of literacy, the Welsh Minister could specify texts to be used as a teaching tool in schools.

7.13 A section 108 order would place a duty on schools to use certain materials as opposed to merely recommending their use via guidance. However, this option is limited as the Welsh Minister would not have the power to set out programmes of study, attainment targets or assessment arrangements for the local curriculum. This would limit Welsh Ministers' capacity to intervene at a local level.

7.14 In relation to training about teaching standards, Welsh Ministers could make regulations under section 21 of the Education 2002 which define the roles and responsibilities of local authorities, governing bodies and head teachers in relation to the conduct of the school. This could encompass provisions about training about teaching standards. Such regulations may confer functions on the local authority, governing body and the head teacher. Specifically this section places a duty on the governing body to conduct the school with a view to promoting high standards of educational achievement. Section 21 would, for example, allow the Welsh Minister to make regulations allocating roles and responsibilities in relation to identifying training needs of teachers and who should provide/secure that. However, it would not allow the Welsh Ministers to require school teachers to undergo specific types of training.

7.15 Section 95 of the Education Act 2005 also provides a power for the governing body of a maintained school to provide training for the school workforce, including scope to provide training as part of a course provided by another training provider. There is therefore an overlap between the respective powers given to governing bodies by section 95 of the 2005 Act and section 21 of the 2002 Act which could lead to inconsistencies in terms of training provision relating to statutory requirements.

Option 3: Power to Issue Statutory Guidance

7.16 Make provision to give power to the Welsh Ministers to issue statutory school improvement guidance to local authorities, school governing bodies and head teachers of maintained schools as to how they exercise their education functions to improve standards of education. This option would promote the development of a new statutory school improvement framework to underpin the priority policy areas outlined within Section 3, including reliable teaching strategies and professional learning communities. The powers will also complement the work of the School Standards Unit⁷ in reviewing national performance, identifying school improvement priorities and introducing challenge on a national basis.

7.17 International benchmarking evidence suggests that education systems with poor and fair performance can achieve improvement through a centre that increases and scripts instructional practice for schools and teachers.

7.18 In relation to curriculum, statutory guidance could be an alternative to a section 108 order under the Education Act 2002 or in addition to such an order. Issuing statutory force to the guidance will ensure that all LAs and schools have

⁷ Now known as School Standards and Delivery Division

regard to it and will reduce variation in the current approach to school improvement. Guidance will ensure a standardised approach in specifying how LAs and schools execute school improvement functions. In addition, a power to enable the Welsh Ministers to direct a body to comply with the guidance if the Minister does not agree with their published reasons will reduce instances of non-compliance.

7.19 In relation to teacher training, it is possible to seek a power for Welsh Ministers to issue statutory guidance as to how the power in section 21 of the Education Act 2002 and section 95 of the Education Act 2005 is to be discharged by governing bodies. Specifically, that guidance could relate to the arrangements to be made by governing bodies of maintained schools, local authorities and head teachers for the training of teachers to allow them to form professional learning communities.

School Organisation

Option 1: Do nothing

7.20 Under the current procedures for deciding school organisation proposals, any proposal which receives objections is referred to the Welsh Ministers for determination. As a result, around 50% of all proposals published require approval by the Welsh Ministers. This does not accord with local authorities' legal responsibility for ensuring the sufficiency of school places provision and efficiency of that provision. Furthermore, the disproportionate role played by the Welsh Ministers is at odds with the fact that expertise in the planning of school places and the detailed knowledge of local needs and circumstances rests at the local and not the national level.

7.21 The involvement of the Welsh Ministers in every proposal which receives an objection adds an unnecessary level of bureaucracy and can sometimes result in significant delay. The most complex cases can take many months to determine because the Welsh Ministers often lack any prior knowledge of the individual proposals and the issues they raise. In addition, "bottle necks" can occur when many local authorities publish proposals at the same time which necessitate referral to the Welsh Ministers. The Welsh Ministers cannot control the flow of statutory proposals and the volume of caseload has led to substantial delays in some cases. This potentially delays the efforts of local authorities seeking to make changes which will lead to a better use of the resources available for education. Indeed the uncertainty that these delays create could in some circumstances inhibit local authorities from bringing forward proposals in the first place.

7.22 At present a single objection to a school organisation proposal can trigger a determination by the Welsh Ministers. This is true even if the objector has no direct interest in the school or schools involved, and where those who are directly affected (pupils, parents, staff etc) are in support of the proposal. In such circumstances it seems nonsensical that proposals should be subject to prolonged independent scrutiny, with the uncertainty that this necessarily entails for all involved.

7.23 The closure of primary schools which have few or no pupils requires the application of the same legislative process as, for example, would be the case with a

complex reorganisation of several secondary schools. It is considered that this process is unjustifiably protracted in the case of schools which are no longer educationally or financially viable. In the case of schools with no pupils, the requirement to follow the same legal process as for schools which have pupils on roll risks bringing the whole system into disrepute.

7.24 Many proposers engage well with stakeholders and explain their intentions clearly when they consult on school organisation proposals, but the current statutory guidance lacks sufficient detail to ensure that there is consistency in the approach taken to consultation and proposers need only have regard to the guidance. Furthermore, both proposers and interested parties are sometimes unclear about what constitutes good practice and what local people can reasonably expect from consultation. As a consequence, consultation can vary considerably in terms of quality and extent, and trust in the process is often diminished.

7.25 Currently, legislation on school organisation is contained in various Acts of Parliament and statutory instruments. These multiple legislative references cause confusion for those responsible for planning school places and determining proposals.

Option 2: Do minimum

7.26 In summary, this option would mean:

Introducing new guidance for proposers which sets out best practice and provides greater detail on how they should fulfil their duty to consult on school organisation proposals;

Amending regulations so as to reduce the number of alterations to schools which require statutory proposals. However, the Welsh Ministers would still determine all disputed proposals.

7.27 In detail, taking the 'do minimum' option would partially but not completely address the following drawbacks to the current system:

Introducing new guidance for proposers setting out best practice and greater detail in relation to consultation on school organisation could have the effect of improving standards and consistency in this area. It would also provide a clearer basis for consideration of decisions about the adequacy or otherwise of consultation. However, because the legislation is framed in such a way that proposers would need only to have regard to such guidance, and could not be compelled to act in accordance with it, its effect may be patchy and short lived. As a consequence, the consultation process is unlikely to acquire a high level of trust and acceptance.

Amending the regulations so that fewer alterations to schools required the publication of statutory proposals would inevitably speed up the process of making those alterations and would reduce the number of proposals determined by the Welsh Ministers. However, it would not necessarily diminish the proportion of disputed statutory proposals being referred to

the Welsh Ministers, and would result in the additional drawback of significant changes to schools being made without any input from local stakeholders and those directly affected. Previous consultation with stakeholders about the current prescribed alterations has not identified any alterations where statutory processes are deemed unnecessary.

7.28 The 'do minimum' option would not:

result in more school organisation proposals being taken at the local level;
make the process any more streamlined or any less time consuming;
introduce accelerated procedures for closure of schools with few or no pupils;
consolidate in one place all school organisation legislation.

Option 3: Establish an Independent Adjudicator

7.29 In summary taking this option would:

see the setting up of an independent adjudicator, similar to that which exists in England, who would determine disputed school organisation proposals instead of the Welsh Ministers. The Welsh Ministers would thus be removed from the process.

7.30 The 'independent adjudicator' option would not:

result in more school organisation proposals being taken at the local level;
make the process any more streamlined or any less time consuming;
introduce accelerated procedures for closure of schools with few or no pupils;
develop greater consistency in the way in which consultation is undertaken, nor ensure that best practice is adopted, thus improving trust and confidence in the system; or,
consolidate in one place all school organisation legislation.

Option 4: Remove requirement for an independent decision maker

7.31 In summary, taking this option would mean:

allowing proposers to determine all proposals themselves and eliminating any requirement for scrutiny of disputed proposals by an independent body.

7.32 This option would achieve the following objectives:

all proposals would be determined at the local level; and,
the process would be streamlined significantly, it would be easily understood, it could be undertaken very quickly and costs would be minimised.

7.33 However, this option would also have significant drawbacks:

the lack of any form of independent scrutiny of the decisions taken by proposers would potentially undermine confidence in the system amongst those affected by school reorganisation;
the lack of scrutiny would provide no incentive to local authorities to ensure that due process is followed; and
local people might feel less not more engaged in the process.

7.34 Potentially, this option could be modified so that whilst most proposals were determined by the proposers, those which were exceptional in some way (e.g. involved the closure of schools with high pupil occupancy rates, or which involved the transfer of pupils over long distances) might trigger referral to an independent decision maker. Alternatively, the Welsh Ministers could retain a power of call-in to use in instances where they believe that the proposers may not have followed due process. The current process of school organisation determination in Scotland contains both these provisions. However, the exercise of a power of call-in would necessarily require a high level of prior consideration of the case which would itself be very time consuming and might prove impracticable. Furthermore, the referral of proposals made in exceptional circumstances would not address instances where local people have raised valid and significant objections to proposals made in unexceptional circumstances and would therefore do little to ensure confidence in the system.

Option 5: Reform the legislative process

7.35 This option would include substantially reforming the legislative process for determining school organisation proposals so that most proposals are determined at the local level, either by the proposer (where proposals receive few objections from those directly affected) or, where there is significant local opposition, by an independent Local Determination Panel (LDP). The Welsh Ministers would continue to determine proposals where these are solely about the addition or removal of sixth form education, or where proposals receive objections from a local authority or, in the case of proposals which affect schools with a religious character, diocesan authorities.

7.36 In summary, taking this option would result in:

fewer proposals requiring determination by an independent third party as a result of objections;
where proposals do require independent determination, a process which is potentially swifter and for the most part conducted at the local level, thereby reducing the uncertainty for those directly affected;
a curtailed process for the closure of schools with fewer than 10 pupils or no pupils;
the introduction of a mandatory code on school organisation which ensures that best practice on consultation and other matters is consistently applied across Wales; and
the bringing together in one place of all legislation relating to school organisation in Wales.

7.37 Of the proposals determined by the Welsh Ministers over the last five years, it is anticipated that only around 6% would have been determined by the Welsh Ministers had the reformed system of reorganisation been in place. Of the rest, approximately 55% would have been determined by the proposed Local Determination Panel and 39% would have been determined by the proposers themselves. Given that currently around half of all proposals published require the Welsh Ministers approval, this represents a very significant transference of responsibility back to the local level.

Welsh in Education Strategic Plans

Option 1: Do nothing

7.38 The process for the introduction of the WESPs on a non-statutory basis has already commenced. Local authorities will have submitted their first WESPs on a non-statutory basis to the Welsh Government by 15 December 2011 for implementation from 1 April 2012. Local authorities will also have submitted their applications for the Welsh in Education Grant (WEG) by 20 January 2012. The WEG and the WESPs are both being aimed at achieving the outcomes and targets of the Welsh-medium Education Strategy. The WEG will be provided to local authorities in 2012-13 regardless of the preferred option.

7.39 Advantages

A non-statutory system is already in place, which includes guidelines for preparing WESPs and approval and monitoring mechanisms.

Local authorities would have the flexibility to follow the non-statutory guidelines as they deem appropriate.

There would be no additional costs for the Welsh Government. Staff are already in place to administer, approve and monitor the non-statutory WESPs and there would be no financial implications in terms of providing funding for the local authorities to implement their WESPs.

The WEG would be provided to local authorities to assist with the implementation of the non-statutory WESP. However, allocation of the WEG would not be made conditional on approval of the WESP. In addition, there would not be continuing pressure on the Welsh Government to provide the WEG to enforce the preparation of WESPs.

7.40 Disadvantages

A statutory planning system for Welsh-medium education (Welsh Education Schemes under the Welsh Language Act 1993) would be replaced by a non-statutory system.

The request to local authorities to complete a WESP for analysis and monitoring by the Welsh Government would not be enforceable.

If not enforceable, local authorities may view the WESPs as a paper exercise with little effect on the education system in terms of providing Welsh-medium opportunities.

Local authorities would not be held accountable to Welsh Ministers for the planning of Welsh-medium and Welsh-language education in the statutory phase of education.

7.41 Risks

Refusal by a local authority to comply might result in local authorities not providing effective planning for Welsh-medium provision and as a consequence, failing to ensure suitable and sufficient Welsh-medium opportunities.

There might be failure to develop the Welsh-language skills of learners to their full potential which might lead to failure to increase the number of learners with high-level skills in Welsh.

Option 2: Do minimum

7.42 Linking enforcement of non-statutory WESPs on local authorities with grant funding.

7.43 In this option, local authorities would have additional incentives to develop appropriate WESPs, even though remaining non-statutory, through linkages to grant funding. Successful application for the full amount of the Welsh in Education Grant (WEG) would be made conditional on approval of the WESP for each local authority.

7.44 Advantages

A non-statutory system is already in place, which includes guidelines for preparing WESPs and approval and monitoring mechanisms.

Linking to grant funding would provide an incentive to develop appropriate WESPs.

There would be no additional costs for local authorities, above the current commitments to 30% match-funding to the WEG (2012-13), as they are already preparing and submitting WESPs to the Welsh Government for approval and monitoring.

7.45 Disadvantages

There would be continuing pressure on the Welsh Government to provide the WEG funding to enforce the preparation of WESPs.

The WEG would be directly linked to specific elements of the WESP. This could lead to a lack of clarity about what might constitute a sufficient failure to fulfil requirements that might merit claw back or reduced future grant.

If the WEG was to be cut, the Welsh Ministers might have reduced influence over local authorities' incentives to prepare or implement a WESP.

There would be additional costs for the Welsh Government associated with linking the analysis and monitoring of the WESPs to the WEG.

7.46 Risks

If local authorities were non-compliant and sanctions were to be applied, this could take the form of claw-back or reduced future allocation of grant. In that case, there is a risk that the influence of the WESPs over ensuring improved Welsh-medium planning and reshaping the training and support framework for Welsh-medium and Welsh-language provision might be reduced in those very local authorities where there may be a greater need for improvement. Claw-back or withholding elements of grant might therefore be counter-productive.

There might be failure to develop sufficient opportunities for learners to access Welsh-medium education.

There might be failure to develop the Welsh-language skills of learners to their full potential which might lead to failure to increase the number of learners with high-level skills in Welsh.

Option 3: Introduce Primary legislation

7.47 Impose a statutory requirement on local authorities to prepare a WESP, to be approved and monitored by the Welsh Ministers, and to take reasonable steps to implement their WESPs.

7.48 This option would meet the policy objectives outlined in Section 3. The WEG would be provided to local authorities to assist with implementation. However, the allocation of the WEG would not be conditional on approval of the WESP.

7.49 Advantages

Legislation would impose new duties in relation to the preparation, implementation and publication of a plan to improve Welsh-medium education (the WESPs). It is not considered that existing powers are adequate as more detailed requirements are needed than existing legislation would allow for.

Statutory WESPs would provide continuity from the Welsh Education Schemes of the Welsh Language Board, with which local authorities have been complying for many years. There would be little, if any, additional administrative burden to the local authorities.

Making the production and submission of WESPs to the Welsh Ministers for approval a statutory requirement on all local authorities would enable close monitoring of local authorities' planning for all Welsh-medium pre-statutory and statutory provision and progress against targets of the Welsh-medium Education Strategy. This would also lead to concentration by local authorities on improvement in standards in literacy in Welsh and Welsh Second Language and to greater collaborative planning of Continuous Professional Development.

The establishment of an improved local authority planning system for Welsh-medium education would result in greater coherence and consistency in the provision of Welsh-medium school places to fulfil projected need or demand in each locality and across regions.

Legislation would provide for the introduction of WESPs as one of the main mechanisms for taking forward the national strategic direction for

Welsh-medium education and would provide accountability to Welsh Ministers.

Local authorities would be expected through their WESPs to plan for more opportunities for learners to access Welsh-medium education where appropriate.

Welsh Government could ensure that local authorities are implementing policies which provide greater opportunities for learners to achieve their potential in the Welsh language, and so achieve a greater number of learners with higher-level skills in Welsh.

If the WEG was to be cut, the Welsh Ministers would still be able to hold local authorities accountable for the preparation of a WESP.

7.50 Disadvantages

There would be some financial implications for local authorities and the Welsh Government in implementing WESPs. These are considered in Section 8.

7.51 Risks

Refusal by a local authority to comply with legislation might result in local authorities not providing effective planning for Welsh-medium provision and as a consequence, failing to ensure suitable Welsh-medium opportunities.

Annual Parents Meeting

Option 1: Do Nothing

7.52 Current law in Section 33 of the Education Act 2002 requires governing bodies to hold an annual parents' meeting every year unless one of the exemptions in the Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005 applies. In practice this means that governing bodies are required to hold a meeting with parents every other school year, and in the intervening year governing bodies canvass the views of parents as to whether they would like a meeting. This option would maintain the current approach.

Option 2: Do Minimum - Remove the requirement to hold an annual parents meeting

7.53 Under current law Welsh Ministers have a power in Section 103(3) of the Education Act 2005 to make an order repealing the requirement for a governors' annual meeting with parents, and repealing existing regulations. If such an order was made governing bodies would no longer have to make arrangements to meet parents every other year and to canvass their views in the intervening years.

7.54 Given what we understand to be the apparent apathy and reluctance of parents to meet the governors under current arrangements, this option could mean that in some schools the governors would never have to take steps to engage parents in the wider life and community of the school, or to seek their views on the future development and direction of the school.

7.55 Should parents want to discuss an issue with the governing body this option does not give them the right to request a meeting, and even if they did ask to meet the governors, there are no requirements on the governors to do so.

Option 3: Introduce legislation - Give parents the right to call a limited number of meetings with the governing body

7.56 Under the proposed option governing bodies would only be required to arrange a meeting if a quorum of parents asked for one.

7.57 Following consultation on the proposals to give a quorum of parents the right to request a meeting with the governing body, it has been decided that parents should be able to request up to three meetings per school year. The proposed quorum of parents required to request a meeting would be:

whichever is the lower of the parents of 10% of registered pupils in a secondary school or the parents of 30 registered pupils, or the parents of 30 registered pupils.

7.58 The right to call for only one meeting per year would limit parents' ability to engage with the governing body and there may be unfinished business from the one meeting which parents would like to follow up on, but this arrangement does not give parents the right to any further meetings. They would need to rely on the goodwill of the governing body to meet them again.

7.59 Increasing the number of potential meetings would provide parents with a real opportunity to engage the governing body during a school year on a particular issue of concern and to be able to have a follow up/progress meeting(s) if they wished. Parents would also have the opportunity to discuss different issues at subsequent meetings. This option also allows parents to have some control over when these meetings should take place and to set the agenda.

7.60 For parents, the advantage of this option is that they will be able to decide (subject to sufficient interest from other parents) when they meet the governing body and will have some control over the topics to be discussed at the meeting.

School-based counselling

Option 1: Do nothing

7.61 This option would involve continuing with the current arrangement of delivering the school-based counselling strategy through a specific grant to local authorities.

Option 2: Do Minimum

7.62 Transfer funding to the RSG but without the underpinning of legislation. Under this option, once the funding is transferred to the RSG it would be for local authorities to determine how best to utilise that funding and whether to maintain school-based counselling services. Guidance on operating school-based

counselling would be developed to support local authorities choosing to continue making school-based counselling available. The biggest risk with this option is that without underpinning legislation local authorities may decide not to continue with the provision or significantly reduce provision. Any removal or reduction in provision could have a negative impact on pupils' health and wellbeing.

Option 3: Introduce legislation

7.63 Transferring the funding to RSG, underpinned by legislation, will firmly embed the Welsh Government's policy of school based counselling in Wales. It will also have the benefit of reducing the bureaucracy involved in running the grant scheme both within the Welsh Government and local authorities, in line with the Front Line Resources Review. The Welsh Government would continue to monitor and evaluate anonymised output and outcome data provided by local authorities.

Free Breakfast Initiative

Option 1: Do nothing

7.64 There is the option of continuing with the current arrangements, i.e. deliver the programme of free breakfasts through a specific grant to local authorities (this arrangement has been in place since September 2004). Payments are made termly in arrears.

7.65 Local authorities currently claim for individual funding elements:

- Set allowance per day per child for food;

- Set allowance per day for staff to supervise and prepare the food – based on a standardised hourly rate and staff to pupil ratios;

- Initial set up allowance to purchase equipment and allowance for replacement items after 3 years involvement in the initiative;

- Cost of providing specified training e.g. Basic Food Hygiene and initial CRB check for new employees;

- Termly allowance per school to support the operation of the scheme – this funding can be used flexibly to support the operation of the initiative, for example to cover higher food or salary costs than the standardised amounts.

7.66 Each local authority also receives an administration fee for managing the initiative – this fee is based on the number of schools participating in the initiative each term.

7.67 Local authorities are required as part of the terms and conditions of the grant scheme to undertake termly spot checks on a minimum of 5% of schools participating in the initiative. The spot check reports are submitted to the Welsh Government.

7.68 As a condition of grant, should the total amount of funding for the year exceed £100,000, (this is the case for 21 of the 22) authorities are required to review the scheme under their internal audit arrangements.

7.69 Under this option additional schools could decide to provide free breakfasts at any point in time. The number of additional schools coming on board each term is fairly low and the administration can be absorbed within the current arrangements. Local authorities receive funding for administering the scheme based on the number of schools participating.

Option 2: Transfer funding to RSG without legislation

7.70 Once the funding is transferred to the RSG it would be for local authorities to determine how best to utilise that funding and whether to maintain this initiative. The current guidance on operating the free breakfast initiative would be developed to support local authorities choosing to continue making breakfast provision available. The biggest risk with this option is that without underpinning legislation local authorities may decide not to continue with the provision; reduce the programme; or, not allow any additional schools to become involved. The School Census 2011 indicated that 1,052 schools reported free breakfast data and that the number of children who took at least one breakfast during the week prior to census was 66,954. The breakfast sessions also provide:

- opportunities for local employment;
- opportunities for local procurement;
- working parents with the option of dropping their children at school on the way to work knowing that they are safe and receiving a healthy breakfast.

7.71 Any removal or reduction in provision would have a negative impact on these areas.

7.72 It is anticipated that a damping mechanism would be required to make the transition from demand led funding to a standard formula based transfer to RSG. This will result in winners and losers for this particular programme as the level of demand varies across local authorities in Wales. This may be the case with other transfers into RSG and as a consequence overall could balance out.

Option 3: Introduce legislation and transfer funding to RSG

7.73 Transferring the funding to RSG, underpinned by legislation, would firmly embed the Welsh Government's policy of free breakfasts in primary schools in Wales. It would also have the benefit of reducing the bureaucracy involved in running the grant schemes, both in the Welsh Government and local authorities, in line with the Front Line Resources Review.

7.74 There is the possibility that in certain circumstances the local authority could decline a school's request to participate in the scheme. However, in these circumstances the local authority would need to demonstrate that it would be unreasonable to make this provision available for reasons which might include, for example, no or low demand, the cost of provision being disproportionately high for numbers involved, or inability to recruit staff.

7.75 The same issues regarding the level of funding transferred to RSG for Option 2 would apply to this option.

Flexible Charging for Schools

7.76 The policy intent is to allow schools and local authorities greater flexibility over the pricing of school meals, within a capped limit. Appropriately designed flexible charging arrangements could help low income families and increase the take-up of school meals.

7.77 The circumstances in which this flexibility could be used might include: (a) to discount the cost of meals for a limited period for the new intake in infant, junior and primary schools (b) to discount the cost of meals for families where there is more than one child wanting school meals (c) to discount the cost of meals for families on low incomes who receive the maximum working tax credit.

7.78 The use of flexible charging would be entirely optional and will involve a local decision to subsidise school meals during the offer period. There will only be an impact in those local authorities which choose to implement the flexibility. The degree of impact would depend on how they implemented it.

7.79 This change in policy will fit in with wider policy developments:

Appetite for Life - the Welsh Government's agenda for improving the food and drink provided in schools;

Healthy Eating in Schools (Wales) Measure 2009, which includes a provision for the 'Promotion of meals in schools and other educational establishments' requiring local authorities/governing bodies to encourage the take-up of school meals. The Minister for Education and Skills has agreed to commence the various provisions within this Measure and the drafting of regulations setting out the requirements for food and drink provided on school premises. It is planned that the duties imposed by the Measure on local authorities or governing bodies should come into force in the Summer Term 2013 for primary schools and September 2013 for secondary schools.

Child Poverty Strategy - The proposed legislation could potentially impact on child poverty and health inequalities as it would allow schools and local authorities greater flexibility over meal pricing, which could be used to help vulnerable families and increase the take-up of health school meals.

7.80 The introduction of flexible charging has the potential to have a positive impact on school pupils by reducing and removing barriers and inequalities that may currently exist.

7.81 The change could, in particular, benefit children in their first year at a new school in the case that local authorities decide to provide meals free of charge for a limited period to encourage children to try school meals. Although the flexible charging period may in such circumstances be temporary, it is hoped that once families and their children habitually take a healthy school lunch, a healthy eating habit will remain with them for life.

7.82 There is also a range of evidence⁸ that a healthy school lunch can have a positive impact on pupils' behaviour, alertness, concentration and their performance at school directly and indirectly. Reflecting on such evidence, local authorities and schools have been working towards providing school lunches which meet the new nutritional standards proposed in *Appetite for Life* and encouraging pupils to take a school lunch.

7.83 It is thought that providing these benefits through implementing appropriate flexible charging structures to pupils from low income families could, in some circumstances, be disproportionately beneficial as school lunch may be their only nutritionally balanced meal of the day. Access to free school meals (FSMs) is means-tested and open to all eligible families who apply for them. Although FSMs are not always taken up by those eligible, many families on low incomes struggle to pay for school meals, particularly if they have more than one child.

7.84 In England, over recent years, it is understood that the Secretary of State has allowed a number of local authorities to pilot a wide variety of school meal deals using the Power to Innovate provisions in the Education Act 2002. In all cases, lunch take-up has risen, benefiting the pupils who have taken advantage of the deals but also helping local authorities and schools to make their lunch services more viable and sustainable in the longer term.

7.85 The Education Act 2011 has since amended the charging requirement in England to allow local authorities and schools in England to use special pricing offers with a view to encouraging more pupils to try a healthy school lunch.

Option 1: Do nothing

7.86 Doing nothing would maintain the current system of pricing where local authorities are allowed to provide milk, meals and other refreshments to certain categories of children and, where they do so, they are allowed to charge for that provision. Therefore, where they do charge, they would have to continue to charge every person the same price for the same quantity of the same item.

7.87 Such pricing arrangements would continue to prevent local authorities and schools from helping families with several children by charging a lower price for the second and subsequent children, or from charging younger children less than older children. There is also nothing to prevent school meal providers from charging pupils more than the cost of producing the food on offer.

Option 2: Utilise the Power to Innovate

7.88 This option would make use of an existing Power to Innovate. Chapter 1 of Part 1 of the Education Act 2002 ("the 2002 Act") gives the Welsh Ministers the

⁸ *School Food Trust: School lunch and behaviour in secondary schools* (published July 2009)

Healthy school meals and educational outcomes, Belot and James (2009)

School lunch and behaviour in primary schools, School Food Trust

Effects of diet on behaviour and cognition in children, in the *British Journal of Nutrition*, Bellisle 2004

power to respond to an application by a local authority by issuing an order suspending or modifying legislation for a period of up to 3 years. The power is intended to enable innovative pilot projects to take place and may by order be extended in time for a further 3 year period.

7.89 Before the Power to Innovate can be exercised, the provisions contained in Sections 1 to 5 of the 2002 Act will need to be brought into force by the Welsh Ministers by Order made under Section 216 of the 2002 Act.

7.90 If the relevant sections are brought into force, local authorities or governing bodies of schools with a delegated budget could make an application to the Welsh Ministers to pilot the operation of flexible charging for school meals.

Option 3: Amend existing legislation

7.91 Under this option, legislation would be amended to enable local authorities and schools in Wales to vary the price charged for milk, meals and other refreshments provided in schools.

7.92 It would though be a matter for local authorities and the governing bodies of schools with a delegated budget to decide, taking account of any funding implications, whether they wish to vary prices.

8. Costs & benefits

8.1 This chapter contains the cost benefit analysis of the options detailed at Section 7.

Intervention in schools causing concern

Option 1: Do nothing

8.2 The current position whereby local authorities do not use their existing powers effectively and proactively would continue. This means that when a school begins to struggle, demonstrating a decline in educational standards and/or financial management, the local authority's statutory role in school improvement is not always exercised at an appropriate point. Many of the schools that have declined to the extent of being assessed by Estyn as requiring special measures have demonstrated performance issues that could have been identified and addressed at an earlier stage.

8.3 The costs of intervening in schools causing concern vary considerably, depending on the nature of the interventions required. To give an indication of the typical range of current costs for Interventions in schools causing concern examples are detailed below.

Local authorities already have the power to issue a warning notice. The cost of issuing a written warning notice is approximated to be in the region of £1000.

A weak school/governing body can be required to collaborate with another school/governing body. The cost is approximated to be in the region of £500 or under..

Local authorities routinely provide school improvement support and monitoring of performance. Examples of possible actions and costs are given below:

- mentoring and oversight from local authority school improvement officers or an experienced head teacher from another school, for example 10 days at approximately £200 per day for a total cost of £2,000 (based on an indicative salary of £40,000 pa)
- extra additional support of, for example, 40 additional days of intervention support at approximately £300 per day for a total cost of £12,000 (based on an indicative salary of £60,000 pa);
- sometimes an external intervention may indicate that one or more members of the school staff may need to be placed under competence procedures, or in extreme circumstances, replaced. This would not introduce additional costs, unless there are severance costs or costs of recruiting additional staff. The salary for a newly qualified school teacher starts at £21,588, the higher point on the head teacher pay scale is £105,097.

Where an authority applies its powers to replace a board of governors with an interim executive board, it has to the power to offer members of that board such remuneration as it considers appropriate. No such board has yet been through a full cycle of its school improvement work but as a

rough guide an interim executive board of 5 members earning £300 per day, meeting 6 times a year for two years would cost £90,000.

In extreme circumstances, Welsh Ministers may use their powers to direct a local authority to close a school. This would involve severance or redeployment costs of the schools' staff which may cost several million pounds which the local authority will be expected to meet.

8.4 Local authorities already have powers to intervene in schools causing concern. The Welsh Government does not collect data on the number of warning notices currently issued by local authorities and the circumstances in which they were issued. Similarly we do not have data where local authorities appoint additional governors or suspend the right to a delegated budget. Only one local authority in Wales to date has replaced the governing body of a school with an interim executive board. There will be existing administrative costs to local authorities in issuing warning notices (approximately £1000) and in providing/commissioning support and to schools in taking action in response. The level of support provided by a local authority will depend on the level and nature of support required by the failing school on a case by case basis. Support could range from arranging for an experienced head teacher to provide advice to a failing school on how best to re-assess its priorities for the next school year, to more serious interventions involving funding extra days of a school improvement officer's time. Local authorities routinely provide monitoring and school improvement services to all schools. Failure to intervene at an early stage, for example by issuing a warning notice, is likely to lead to problems becoming entrenched leading to costlier interventions later on or ultimately school failure leading to closure.

8.5 More significant than the financial costs of intervening in schools causing concern are the qualitative benefits on education standards: a school demonstrating strong leadership and driving forward a school improvement plan can demonstrate rapid results (e.g. in increased proportions of pupils receiving five or more GCSEs on leaving).

Option 2: Do Minimum - To consolidate and restate existing provisions

8.6 There would be administrative costs to the Welsh Government in consolidating and restating existing provisions and updating non-statutory guidance to reflect these changes, but these would be minimal (one-off costs of £2,000 in 2012/13 based on the issue of similar guidance).

8.7 There would be benefits to local authorities in consolidating and restating existing provision as it would make the law easier for them to navigate and provide clarity on their powers and the circumstances in which they can be used. However the criteria for issuing warning notices will continue to deter local authorities from issuing them sufficiently early, allowing schools to deteriorate for too long leading to the need for some of the costlier interventions set out in 8.3 above.

Option 3: Consolidate and where necessary reform existing provisions

8.8 These provisions do not impose additional burdens on local authorities. Local authorities have existing powers to intervene in schools causing concern. The intention is to encourage earlier and more effective use of those powers. It is reasonable to expect that where a school is identified as a cause for concern and is unable or unwilling to engage constructively with the local authority to secure improvement that there will be a need for the local authority to intervene at some stage. As such whilst we might anticipate an increase in the issue of early warning notices, we would expect a decrease in the requirement for more intensive and costlier interventions later on if problems are allowed to reach crisis point.

8.9 We anticipate that broadening the criteria for issuing warning notices may lead to local authorities issuing warning notices earlier to secure more rapid school improvement. As stated in Option 1 above the administrative cost to local authorities in issuing a warning notice is approximately £1000. There would possibly be a cost to the local authorities in providing/commissioning support and to schools in responding to the weakness in line with the examples provided in Option 1. The costs involved will depend on the failure involved and the particular action required in response. As such it is difficult to quantify, being largely based on local authority officer time. As a broad estimate it may take one week of two officers' time for attendance at all meetings, evidence gathering and application of warning notices with a gross rough cost estimate of £500 a day (based on one week of two indicative salaries of £50,000), but as this would probably be regarded as high priority work it would be a fair assumption to make that the need to produce a warning notice would supersede other activities and would cost less. Local authorities routinely provide monitoring and school improvement services to all schools. However, earlier intervention is likely to be less costly and should lead to cost savings in the longer term as schools will not be left to underperform for long periods of time and until problems reach crisis point leading to more costly interventions in the longer term. As such, active application of local authority powers in line with statutory schools causing concern guidance may lead to reduced intervention costs

8.10 There will be benefits to children and young people in not attending underperforming schools for long periods of time given the detrimental impact this has on their educational outcomes. There are significant economic benefits associated with improving educational attainment of children and young people in Wales. These are difficult to quantify.

8.11 As stated in option 2 there would be some administrative costs to the Welsh Government in issuing statutory guidance on schools causing concern but these costs are expected to be minimal (one off costs in the region of £2000 in 2012/13) based on the issue of previous guidance.

Preferred Option

8.12 After full consideration of the options we decided not to opt for options 1 and 2. These options would not change the current position as identified by Estyn where schools are allowed to underperform for long periods of time because local authorities fail to use their full range of intervention powers.

8.13 This will continue to have a detrimental effect on the educational outcomes of children and young people attending those schools and a wider cost to society.

8.14 We have decided to opt for Option 3 as the only option that will secure the overall aim of ensuring that local authorities are aware of their powers of intervention in schools causing concern and those of Welsh Ministers and that they use those powers effectively and proactively to bring about the rapid improvement of underperforming schools.

School Improvement

8.15 The statutory school improvement guidance would specify ways that teachers, schools or others could undertake their existing roles more effectively.

Option 1: Do Nothing

Costs

8.16 Although there would be no additional legislative costs directly associated with this option, without statutory school improvement guidance it is likely that school standards will remain lower than they ought to be. Whilst some schools will identify and implement educational processes, such as schemes of work, that are best practice, many will continue not to do so, as shown by evidence from school inspections and Estyn studies. In the long term it is possible that there could be some financial costs associated with a need for other intervention measures to address performance issues such as an external evaluation or involvement of external experts to improve educational performance. In total these are estimated to be around £350,000 comprising £50,000 to conduct an external evaluation and £300,000 to implement the evaluation action plan. This additional cost burden, to be met by the Welsh Government, could potentially arise over the next 5 years, if performance standards continue to decline.

Benefits

8.17 No additional benefits are anticipated by maintaining the current arrangements. However, this option would retain the current flexible approach to school improvement, without the confines of prescriptive, statutory guidance. Local authorities can continue to apply an ad hoc approach to improving performance, identifying schools with good practice and promoting effective ways of sharing this with underperforming schools.

Risks

8.18 Existing evidence has clearly demonstrated that this approach is failing to drive up performance standards. If there are no powers for the Welsh Ministers to direct less successful schools to adopt effective practice, current performance gaps are likely to persist.

Option 2: Do minimum

Costs

8.19 The overall financial costs for this option are estimated to be £430,000 of which only £7,500, in relation to on-going stakeholder meetings, will be recurrent. Transitional costs include awareness raising with schools and local authorities (estimated cost of around £313,000), collating best practice (estimated to be just under £110,000), with the remaining costs associated with consultation and publishing. The profile of the costs will occur over several financial years to coincide with academic years commencing in 2012/13.

8.20 The total costs of £430,000, identified above, in relation to this option would impact upon Welsh Government, local government and schools. These development costs would need to be met by the Welsh Government through the School Effectiveness Grant.

8.21 However, these costs could increase if the additional intervention costs of £350,000 comprising £50,000 to conduct an external evaluation and £300,000 for a 2 year secondee appointment to implement the evaluation action plan, noted in the option 1 also apply.

Benefits

8.22 In comparison to option 1, this approach would enable local authorities to retain a degree of freedom and flexibility in adopting innovative approaches to school improvement in relation to the local curriculum. This option would also provide scope for the Welsh Minister to direct the school improvement agenda using existing legislation, promoting new policy changes through a curriculum order or making regulations to influence teacher training.

Risks

8.23 This option would significantly limit the powers of intervention to support the wider use of best practice activities within schools, and therefore may not be able to achieve the policy requirements.

Option 3

Costs

8.24 The overall estimated cost for this option is £1,700,000. In addition to the £430,000 of costs outlined for Option 2, there is an estimated £1,000,000 of costs associated with local authority support to schools, plus estimated costs of £270,000 associated with extended awareness raising in schools, evaluation and best practice costs. These transitional costs are based on the implementation of one school improvement strategy and would occur over a period of one year following introduction of any new statutory school improvement guidance.

8.25 The estimated costs of £1,700,000 in relation to this option would impact upon Welsh Government, local government and schools. These development costs would need to be met by the Welsh Government through the School Effectiveness Grant.

8.26 As the guidance will be statutory there could be additional follow-on costs in terms of providing training for schools and providing ongoing implementation support. These costs would depend upon the complexity of the priority policy area and the level of implementation support required. Ongoing implementation support costs are estimated at £500,000 per annum (over a 3-5 year period), as the level of support is reduced and the policy becomes self sustaining.

8.27 The statutory school improvement framework will comprise 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 priority. 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.

Benefits (also see Sections 3.22; 8.1)

8.28 The potential benefits directly associated with improvements to schools guidance are very difficult to estimate. However, the broader evidence is supportive of the importance of the role of teacher quality in educational outcomes. Where effective, associated improvements could give rise to important educational benefits.

8.29 *Benefits to the current system would include:*

statutory guidance would place a strong legal obligation on local authorities and schools to follow it unless they complete a statutory process. A move to a mandatory, standardised approach will begin to reduce the high degree towards one of variation at local level by directing the approach to school improvement based on proven good practice;

increased capacity for the Welsh Government to intervene, challenge and standardise performance, including addressing some of the variations in sharing good practice;

power for the Welsh Ministers to direct local specific authorities/schools to comply with the statutory school improvement guidance to address performance issues;

maintaining flexibility for local authorities to innovate at a local level, providing the contrasting approach attains the desired educational outcomes;

a move to a statutory approach to sharing good practice will increase collaboration, providing opportunities for schools to improve;

there would be offsetting cost reductions in the time teachers and head teachers spend in researching and developing practice for their school. For example, if a school were able to refer to quality assured statutory guidance to update an area of educational practice, this may reduce the search costs to the school (an estimated minimum £100 per day, based on the average teacher salary) for each school improvement area. As a guide, school development plans will contain several areas of

improvement set out each year, with a projected average of six, thus making a saving of £600 per school per year, or at least £1 million worth of teacher time spent on more productive activity.

8.30 *Risks*

guidance is not law and does not confer powers or duties. A body or person may be able to depart from statutory guidance if they have good reasons for doing so and they follow the procedure set out above. It may prove difficult to gather sufficient evidence to challenge a case for departure;

the effectiveness of statutory guidance will depend on the quality of the drafting, whether it is well publicised, whether it represents current good practice and how effectively it is monitored. The Welsh Government will need to ensure that effective gate keeping arrangements are in place to ensure a consistent approach.

Preferred Option

8.31 In view of the evidence presented above, Option 3 is presented as the preferred course of action.

8.32 The main reasons are:

The available evidence has repeatedly proven that the flexible approach to school improvement outlined within options 1 and 2, has failed outright.

Though the identified costs associated with the preferred option are in excess of those of the other options, based upon comparable reforms successfully adopted in high performing countries, such an approach could give rise to much larger benefits in terms of contributing to improvements in educational outcomes which would be sufficient to support Option 3.

This option will provide a mechanism to drive forward the Minister for Education and Skills' "20 Point Action Plan"⁹ for Education in Wales to raise standards and narrow the attainment gap through a mandatory approach, based on proven best practice.

Complementing the work of the School Standards Unit¹⁰, this approach will ensure that the Minister will be equipped to respond decisively to emerging priorities including the disparate approach to sharing best practice.

This option will also reinforce revised Estyn inspection arrangements in identifying and disseminating sector leading practice. Estyn evidence has

⁹ Now subsumed under the 'Improving Schools' Plan – the National Implementation Plan for 3 to 16 education in Wales

¹⁰ Now known as School Standards and Delivery Division

proven that many schools achieve very well and these schools can provide useful models to others about what works best.

This option will still provide sufficient flexibility for local authorities to adopt an innovative approach to school improvement, but not in a way that the government does not support.

This approach will also begin to deliver the Minister's commitment to make best practice our standard by beginning to change the culture of continuing professional development to promote excellent teaching and raise standards across Wales such as through the implementation of professional learning communities.

A standardised approach to school improvement, through prescriptive statutory guidance, will improve school self evaluation and improvement planning and also maximise the input of localised services to support school improvement.

This approach will not only improve the effectiveness of schools in need of additional support but will also enable successful schools to showcase leading edge practice to support wider improvement system in Wales. A move to a more prescriptive approach, detailing the circumstances in which there can be a departure, will also reduce requests to challenge the guidance.

Option 3 will improve the quality and consistency of teaching by encouraging teachers to base their practice on techniques that have been shown to work and ensure that professional development opportunities are focussed on the priorities for school improvement. Ultimately, this will improve the learning experience of students in the classroom.

Option 3 will also reinforce comparable provisions within the Bill to issue statutory guidance in relation to formal intervention in schools by local authorities and Welsh Ministers.

Option 3 will lay the foundation for Wales to compete with the other high performing countries and make strides in working towards the ultimate long term benefit in creating and sustaining a culture of improvement.

School organisation

8.33 There would be one-off costs of associated with the implementation of the school organisation provisions in the Bill. These would be unlikely to exceed £6,500.

8.34 The operation of local determination panels would involve an average per annum cost per local authority area which would be unlikely to exceed £2,500 (£55,000 across Wales).

Option 1: Do nothing

Costs

8.35 Although not routinely calculated, the estimated average cost (based on an estimate of staff time by grade spent on each proposal and set against the average salary costs for each grade) of a school organisation proposal determination by the Welsh Ministers is between £4,000 and £5,000. On average over the last five years, around 17 proposals have been determined by the Welsh Ministers. Therefore the current annual cost to the Welsh Government of determining proposals is up to £85,000 per annum.

8.36 There would be no additional recurring costs associated with this option. There would also be no cost transfers under this option.

8.37 If this option is taken, there is no reason to believe that the number of proposals determined would change significantly, so the annual determination costs would remain at around their current level. Taking this option would also mean that there would be no additional direct costs incurred by local authorities or others.

Benefits

8.38 The current system is well understood by those involved in it, and it provides a framework for sound decision making. However, there would be no additional benefits associated with maintaining this option.

Option 2: Do minimum

Costs

8.39 One-off additional transitional costs, which would fall on the Welsh Government, for this option only, in the 2012/13 financial year, of producing and printing new guidance on best practice, issuing amended regulations and undertaking familiarisation training for local authority officers would be unlikely to exceed £8,500 (£6,500 for guidance and £2,000 for regulations).

8.40 In terms of recurring costs, proposals which involve altering existing schools account for perhaps only one third of proposals published – proposals involving the closure or establishment of schools are more frequent and tend to be more contentious. Therefore, a large majority of the current cost of school organisation proposals, both to proposers and the Welsh Ministers, would remain, as set out above in paragraph 8.35, even if all alterations to existing schools no longer required statutory proposals.

Benefits

8.41 Eliminating the need for statutory proposals in relation to alterations to schools (for example, to increase the capacity of a school significantly) would save local authorities and other proposers the on-going costs of consulting on and publishing such proposals. Although difficult to estimate, these costs are likely to range from £2,000 to £3,000 per proposal (assuming newspaper publication costs of

around £1,800 and a limited consultation exercise) up to many thousands of pounds for proposals which are very complex or contentious. Reducing the range of prescribed alterations would also save the Welsh Ministers £4,000 to £5,000 for each proposal which no longer required determination.

Option 3: Establish an Independent Adjudicator

Costs

8.42 There would be some initial transitional costs involved in establishing an independent adjudicator including recruitment and training costs for the four or five staff members who would likely be required. These have not been calculated, but would be expected to be relatively modest.

8.43 The recurring costs of operating an independent adjudicator system would be considerable. For example, the annual running cost of the Office of the Schools Adjudicator (OSA) in England in 2010-11 amounted to around £655,000. The OSA estimated that about 24% of adjudicator time was spent on school organisation proposals in 2010-11 (the OSA also deals with issues such as admissions objections). This would suggest that the total cost of dealing with statutory proposals was around £157,000 (i.e. 24% of £655,000), or £4,249 for each of the 37 proposals determined during the same time frame (roughly equivalent to the £4,000 to £5,000 estimate per decision made by the Welsh Ministers).

8.44 On average over the last five years, around 17 proposals have been determined by the Welsh Ministers. If an adjudicator system were put in place there would be no obvious reason why the number of proposals requiring determination would change. Bearing this in mind, and taking into account the cost of the English model, the greater economies of scale involved in that model plus accommodation costs (which are not included in the running cost figures provided by the OSA) it does not seem likely that an independent adjudicator system could be operated in Wales for less than £100,000 per annum, i.e. the likely minimum cost of determining each proposal (£5,000) multiplied by the approximate number of proposals per annum (17) plus accommodation costs.

8.45 There would be no costs transfers under this option – the cost of funding the independent adjudicator would fall upon the Welsh Government just as the current cost of determinations by the Welsh Ministers does.

Benefits

8.46 As set out at option 1, the annual cost to the Welsh Government of determining proposals might currently be up to £85,000 per annum. These savings would be offset against the costs incurred through the operation of an independent adjudicator.

8.47 The principal benefit of an independent adjudicator system would be that it ensured a strong element of independent scrutiny remained in place whilst at the same time removing any possible appearance of political bias in the decision making process.

Option 4: Remove requirement for an independent decision maker

Costs

8.48 There would be no transitional costs associated with this option other than the cost of familiarisation training for local authority officers conducted by Welsh Government officials which would be unlikely to exceed £1,500.

8.49 In terms of recurring costs, there would be few identifiable additional financial costs to any party associated with this option. As proposers would determine all proposals this would, in the case of disputed proposals, result in some additional outlay for them in terms of the extra time and effort required. However, the financial cost would be very small – it seems unlikely that it could exceed the sum of a few hundred pounds in relation to any proposal.

Benefits

8.50 This option would result in a financial savings to the Welsh Government equivalent to the estimated annual average cost of determining disputed school organisation proposals, i.e. up to £85,000.

8.51 This option would result in a streamlined procedure for the determination of all proposals which in turn would significantly reduce the time taken to process proposals. This reduction in determination times could, in some instances, result in significant savings. For example, where proposals involve the construction or alteration of school buildings, any delay caused to the construction timetable by a prolonged determination process could substantially increase construction costs. Indeed, many proposals involving the closure or amalgamation of schools generate revenue savings worth tens of thousands of pounds per annum (often through reductions in staff costs, particularly head teacher salaries) so any delay in implementation can prove costly.

8.52 Furthermore, the greater certainty engendered by the streamlined process might encourage local authorities and others to bring forward proposals at a faster rate thus delivering any resource savings associated with the proposals more quickly.

8.53 However, the full impacts of any changes in schools organisation or the timings of schools reorganisation are not readily quantifiable. Such implications would be subject to separate assessments.

Option 5: Reform the legislative process

Costs

8.54 The one-off (transitional) costs of producing and printing relevant guidance on the legislation and best practice, issuing and undertaking familiarisation training for local authority officers would be unlikely to exceed £6,500. These costs would arise

under this option only and would fall on the Welsh Government, in the 2012/2013 financial year with potential to cross into the 2013/14 financial year.

8.55 This option, and in particular the operation of local determination panels, would involve some additional recurring costs to local authorities. This would include allowances and expenses payable to members of the LDP, the cost of providing a clerk and the necessary administrative support, legal advice, and room hire costs.

8.56 These costs would be difficult to quantify exactly and might vary according to local circumstances and the complexity of any proposal under consideration (for example, a more complex proposal might require an LDP to meet several times whilst in other cases only one or two meetings might be necessary). However, it is considered that they might range, on a per proposal basis, from less than £500 where proposals are able to be determined with two meetings (assuming that the cost of room hire and refreshments, allowances and expenses and clerking costs does not exceed £250 per meeting) and little administrative support or legal advice, up to a likely maximum of £5,000 where a series of meetings is necessary, legal advice is required and officers are required to provide significant administrative support.

8.57 Analysis of the proposals determined by the Welsh Ministers over the last 5 years suggests that each local authority LDP would determine, on average, just over 1 proposal every two years meaning that the average per annum cost of operating each LDP would be very unlikely to exceed £2,500 based on the assumptions made above. This cost might increase in the future if a higher proportion of proposals receive sufficient objections to trigger an LDP determination, or if the number of proposals published increases, but it seems unlikely that the average number of proposals determined by an LDP would exceed 1 per annum, or that the cost would exceed £5,000 per local authority per annum.

8.58 The Welsh Government would need to monitor compliance by local authorities and LDPs with their statutory requirements. The cost of doing so would be small; probably less than £1,000 per annum. In addition, the Welsh Ministers would continue to determine a small number of proposals; fewer than 2 a year on average at a cost of around £8,000 per annum.

8.59 There would be an element of cost transfer involved in this option in that the cost of determining disputed proposals which currently falls to the Welsh Ministers would now be borne to some degree by local authorities. These costs are set in paragraphs 8.50 and 8.56 to 8.57 above. Currently it is estimated that there is an annual cost of up to £85,000 per annum incurred by the Welsh Government for Welsh Ministers' determinations. Under this option the Welsh Government would make annual expenditure savings of approximately £77,000, whilst local authorities would incur increased expenditure, approximating £55,000 year in total if the number of proposals dealt with remains at the current level.

Benefits

8.60 Under this option, and based on an analysis of the proposals determined by the Welsh Ministers over the last 5 years, the Welsh Ministers would be determining

fewer than two proposals per annum, costing around £8,000 to £10,000 per annum in staff time (based on the estimate of average costs previously given). This would be a saving of up to £77,000 per annum (in staff resources).

8.61 As with option 4, but to a lesser extent, this option would result in a streamlined procedure for the determination of proposals, particularly for proposals involving the closure of schools with fewer than 10 pupils or the 39% of proposals which currently require determination by the Welsh Ministers but which under the new arrangements would be determined by the proposer. This in turn would reduce the time taken to process proposals. This reduction in determination times could, in some instances, result in significant savings.

8.62 For example, where proposals involve the construction or alteration of school buildings, any delay caused to the construction timetable by a prolonged determination process could substantially increase construction costs. In the case of schools with no pupils, costs associated with retaining a building and so on, would be eliminated far more quickly. Indeed, many proposals involving the closure or amalgamation of schools generate revenue savings worth tens of thousands of pounds per annum (often through reductions in staff costs, particularly head teacher salaries) so any delay in implementation can prove costly. Furthermore, the greater certainty engendered by the streamlined process might encourage local authorities and others to bring forward proposals at a faster rate thus delivering any efficiency savings associated with the proposals more quickly.

8.63 However, the full impacts of any changes in schools organisation or the timings of schools reorganisation are not readily quantifiable. Such implications would be subject to separate assessments.

Preferred Option

8.64 Reform the legislative process would result in savings to the Welsh Government. There would be some modest extra costs to local authorities associated with the operation of LDPs though these would be expected to be outweighed by efficiency savings resulting from a more streamlined process. Furthermore, this option would contribute significantly to the achievement of all five policy objectives. Therefore Option 5 is preferred.

Welsh Education Strategic Plans

8.65 There are some baseline costs which are applicable across all options.

8.66 In terms of administration costs, the annual costs to the Welsh Government associated with the submission by each local authority of a WESP for approval and monitoring is estimated (based on 3 full time equivalent (FTE) staff and associated travel costs) to be around £116,000. Annual administration costs for the local authorities are estimated to equate to around £14,000 per local authority. There are also some modest costs in respect of publication of WESPs, estimated to be a maximum of £2,000 per local authority.

8.67 In total, the annual administration costs are estimated to be around £468,000. As the WESPs are currently being prepared, approved and monitored on a non-statutory basis, these costs are already being incurred by the Welsh Government and the local authorities and will continue under all options.

8.68 The funding requirements for the WEG apply across all options in the immediate term. Based on the current level of Grant, the Welsh Government would be required to provide £5.030 million per annum and local authorities would be required to provide 33% match funding, a total of £2.47 million across all local authorities.

8.69 However, in the case of Option 2 the use of the WEG as part of the incentives relating to WESPs could potentially give rise to longer-term requirements to maintain such funding approaches.

8.70 In addition to the costs outlined elsewhere, there could be some capital funding cost implications for local authorities should local authorities need to provide more Welsh-medium school places. These capital costs are not quantifiable at this stage as they would depend on whether any requirements for new build, refurbishment or reorganisation of school buildings would be progressed. The Welsh Ministers will consider the availability of capital funding when assessing WESPs under all options.

Option 1: Do nothing: keep WESPs as non-statutory documents completed by local authorities on a voluntary basis for discussion with Welsh Ministers

8.71 Given that the WESPs would remain non-statutory and that the allocation of the WEG would not be made conditional on approval of the WESP, it is possible that some local authorities will fully implement their WESPs, while others take minimal steps. Therefore, the cost of the 'do nothing' option could vary according to the extent of local authorities' implementation of the WESPs.

8.72 In addition to the baseline costs set out above, where local authorities adhere to the non-statutory guidelines, they will incur costs for undertaking surveys to measure demand on a regular basis. The average costs of administering and analysing surveys is estimated at a maximum of £15,000 each. The guidelines recommend undertaking surveys once every 3 years. The total maximum estimated cost per annum would therefore, on average, be around £5,000 per local authority, which would equate to around £110,000 per annum across all local authorities. These costs are already being incurred by some local authorities. (*However, it should be borne in mind that 15 local authorities have been active in measuring the demand regularly and are already funding these processes themselves. Also, under the circumstances outlined in regulations, four local authorities would not be required to measure the demand for Welsh-medium education. The overall cost would more likely, therefore, to be around £5,000 per annum for 18 local authorities, thus slightly lower than the £110,000 estimated above.)

** Additional information supplied to CYPC on 21 August 2012*

Option 2: Do minimum: Link enforcement of non-statutory WESPs on local authorities with grant funding

8.73 This option would additionally involve costs associated with linking the analysis and monitoring of the WESPs to the Welsh in Education Grant. The additional administrative costs in terms of Welsh Government staff time are estimated on the basis of standard staff costs for the expected extent of work to be around £19,000 annually. These administrative costs are already being incurred by the Welsh Government.

8.74 As noted above, this option might also imply some longer-term requirements to maintain such funding approaches as part of incentivising the development and implementation of the WESPs. Without maintained or increased levels of the WEG funding, the leverage of the Welsh Government on local authorities to submit and implement their WESPs could be limited. This option therefore involves long-term commitment to the WEG funding as a lever of government.

Option 3: Primary legislation: impose a statutory requirement on local authorities to prepare WESPs for approval and monitoring by Welsh Ministers and to make reasonable endeavours to implement their WESPs.

8.75 Over and above the baseline costs (£116,000 for the Welsh Government and £352,000 across all local authorities per annum) and the costs of the Do Nothing option (£110,000 across all local authorities per annum), there would also be some additional associated one-off (transitional) administration and legal costs for the Welsh Government for the preparation of regulations and statutory guidance, at approximately £110,000 (based on 2 FTE staff at Band F and associated travel costs). The timeline for incurring these additional (transitional) costs for the Welsh Government is likely to be January 2013 – December 2013.

Preferred option

8.76 The Welsh Government has taken responsibility for creating a more effective planning system for Welsh-medium and Welsh-language education. Future progress is predicated on the use of the WESPs and their ability to stimulate incremental, measurable improvements.

8.77 It is expected that all three options would result in some progress being made in achieving the anticipated outcomes. However, the extent and timeliness of the implementation will vary. There are potential capital funding implications for local authorities if, as a result of measuring parental demand, they need to adjust their school planning. However, though it is possible that such requirements could vary across these options, such impacts are not readily quantifiable at this stage.

8.78 Under the Do Nothing option (Option 1), there would be no effective means of enforcement on local authorities to prepare and implement a WESP. As a result, it is likely that the fragmented and reactive approach to planning and provision would continue.

8.79 Linking enforcement of non-statutory WESPs on local authorities with grant

funding (Option 2) would enable Welsh Ministers to have some influence over the extent to which local authorities prepare and implement WESPs. However, as this would be dependent on grant funding, there would be continuing pressure on the Welsh Government to provide the same or higher level of grant funding to enforce the preparation of WESPs.

8.80 A statutory requirement on local authorities to prepare WESPs (Option 3) would enable Welsh Ministers to impose a statutory requirement on local authorities to prepare a WESP, to be approved and monitored by the Welsh Ministers, and to take reasonable steps to implement their WESPs. This option would ensure that the desired national planning and accountability system for Welsh-medium education is achieved.

8.81 The additional financial implications for local authorities for Option 3 would be modest in terms of staff costs and administrative time to fulfil the terms and conditions of the statutory requirement as outlined in the Bill. The presented expected advantages of this option, above those of the other considered options, lead to the determination of the use of legislation as the preferred option.

8.82 It is therefore considered that making the WESPs statutory is the most effective course of action to pursue this policy intent. Making WESPs a statutory requirement will further evidence that Welsh Ministers intend to follow through on ensuring effective local authority planning for Welsh-medium education and improved linguistic continuity and practitioner development.

Annual Parents Meeting

Option 1: Do nothing

8.83 Leaving the current arrangements as they are, which is that governing bodies hold a meeting with parents every other year, and in the in-between years they ask parents if they would like a meeting, would not incur any additional costs for schools or parents other than what is already spent such as:

- the cost to the school to print a notice informing parents of the meeting, or asking them if they would like a meeting;
- the time of governors and the clerk to attend a meeting;
- the time of a person to set out the meeting; and
- the travel and time costs for parents should they choose to attend.

8.84 It is very difficult to accurately reflect the costs involved as there are so many variables to take into account. For example, the cost of sending a notice to parents will depend on how many pupils in the school and how many parents need to be contacted and whether those parents have indicated that they want a printed notice or an electronic notice. In a very small school this could be as low as £15 based on a school with 30 pupils and the cost of 50p per notice, or £750 in a school with 1,500 pupils. These costs assume that all parents would want a printed copy of the notice. It is likely these costs will be reduced where parents have asked for electronic notification.

8.85 As regards the time of governors and the clerk to attend a parents meeting, this will depend on when the parents meeting is arranged. If it is held after a governing body meeting the clerk and the governors will already be present. The time cost therefore is an additional 15 minutes waiting time to see if parents attend. The cost to pay the clerk depends on who the clerk is and how they are employed. This could range from £25 per school if a clerk is employed privately up to £150 if the school has a local authority clerk. Again the cost of the time to the person setting out the room cannot be estimated as this will depend on their salary scale.

8.86 The time and travel costs to parents will vary depending on how close or far away they are from the venue for the meeting. Some parents will walk to the school; in city areas some parents may have to drive for 10-15 minutes whilst in rural areas parents could be travelling up to an hour to get to the school. How much that cost them will depend on the size engine of the car they have and the amount of petrol used.

8.87 However, there would be no additional benefits through maintaining the current system.

8.88 Doing nothing would not achieve the Welsh Government's policy objective to remove the requirement on governing bodies to hold a parents meeting which is generally not well attended or supported by parents and to give control to parents as to when these meetings would be held. Every other year a meeting would have to continue to be arranged or the views of parents sought on whether or not to have a meeting.

Option 2: Remove the requirement to hold an annual parents meetings

8.89 This option would give rise to potential savings through avoiding currently incurred costs such as the very minor costs of meeting administration and costs of hosting annual parents meetings. In addition, there would also be some potential benefits in terms of the avoidance of the wasted time of governors.

8.90 However, parents are one of the major stakeholders in a school, and whilst many schools and governing bodies would welcome the removal of the need to arrange such a meeting, it removes an opportunity for parents to discuss issues of concern or have any say in the way a school is being run, and the benefits associated with such engagement. Such benefits are very difficult to estimate quantitatively.

8.91 This option also means that governing bodies would be under no obligation to hold a meeting or to engage parents and parents would not have the right to request a meeting. For many schools this could mean that the parents and governors will never meet which is likely to have a negative impact on the relationship between parents and schools.

Option 3: Give parents the right to call a limited number of meetings with the governing body

8.92 The current evidence suggests there is a general lack of interest on the part of parents in attending meetings and that such meetings are rarely timely for parents. It is expected that very few schools will receive a request from parents for a meeting. For a majority of schools this will mean that they will not have to go through the process of arranging a meeting which is generally poorly attended (if any parents at all attend). Where this is the case, they would therefore not incur the current costs associated with resources devoted to organising such meetings.

8.93 For parents, this option clearly places the onus on them to ask the governing body for a meeting. Under the proposals parents would have to arrange for a requisite number of signatures to make the request for a meeting.

8.94 From a costs perspective, if a governing body meets the parents once a year following a request, the costs to arrange the meeting, attendance and travel costs, clerk costs and costs to parents should be similar to the costs currently incurred if the governing body arranges an annual parents' meeting which is attended by parents. Given the variances involved it is not possible to give an estimate but these costs will be negligible.

8.95 If the parents were able to request additional meetings (up to two per year), where this took place, this would be expected to lead to an increase in costs associated with the time commitment from governors, (including school staff), the clerk to the governing body and the person setting out the room for the meeting compared to what is already in place. There could also be a small increase in the administrative duties of the chair of governors and the clerk, who would be responsible for managing the meetings and taking the minutes.

8.96 There would also be some additional costs to the school to print and send out paper notices (where required) to other parents informing them of the request for a meeting and the proposed time and date. Based on the costs in paragraph 8.84 above the cost of sending out a paper notice to all parents for one meeting per year is estimated as costing £15 in a 30 pupil school where the cost of printing is 50p per notice. An additional two meetings per year would cost the school an extra £30 per year. In a school with 1,500 pupils the cost of printing a notice for all parents for one meeting per year is £750. An additional two meetings per year would cost the school an extra £1,500 per year. There would be some minor additional travel costs to governors to travel to the school for the two meetings. Parents who wished to attend the meetings would also incur some additional travel costs for the additional meetings, though again these would be likely to be relatively modest. To attend additional meetings per year would also result in a small increase in cost of time to both governors and parents. There would also be costs to the parents through organising sufficient interest to propose the meeting. Given the variances involved it is not possible to give an estimate but these costs will be negligible.

8.97 Given the various arrangements in place for clerking governing bodies which were set out in Section 8 of the Explanatory Memorandum and Regulatory Impact Assessment for the Education (Wales) Measure 2011, published on the National Assembly for Wales' website, it is not possible to accurately predict how much of an increase in cost there would be for the governing body to arrange for up to three meetings per year to be clerked. Based on information obtained from those local

authorities that clerk governing bodies, the maximum cost of clerking meetings, which are in addition to those set out in the Service Level Agreement, would be around £150 per meeting. If a governing body had three meetings per year (which is two more than is currently required under the law) this could increase the cost for a local authority clerk by £300 per school. For a private clerk, based on an amount of £25 per meeting, this would increase the costs to the school by £50.

8.98 Whilst having up to three meetings per year could potentially be more time consuming for governors to manage, it does present parents and governors with the opportunity to meet and talk about issues that are of concern to the parents. This could potentially provide additional benefits, though these are very difficult to quantify.

8.99 Knowing that they will be accountable to parents in this way will help schools to focus on being more transparent about their plans for the development of the school and parents will be able to contribute to this process.

Conclusion and preferred option

8.100 There is no benefit in option one which is to require governing bodies to continue to hold an annual meeting with parents which is not supported or valued by the parents in many schools in Wales.

8.101 Option two, to remove the requirement for governing bodies to hold an annual meeting with parents and not replace it with an alternative, is not a viable option as it means that schools would not be required to engage parents, and parents would not have any rights to request a meeting with the governing body.

8.102 Our preferred option is option three which is to give a quorum of parents the right to request up to three meetings per year as this would ensure that parents could control the timing of these meetings and have them when they have issues they wish to discuss. The parents would also be able to determine the agenda and issues to be discussed at the meeting.

School-based counselling

Option1: Do nothing

8.103 The continuation of a ring fenced grant would ensure continued provision of school-based counselling as it has been established under the Strategy (2008). With the continuation in the current administration arrangements and level of service provision there are no additional costs or benefits associated with this option.

8.104 There are currently approximately 160 counsellors working in secondary schools, secondary special schools and pupil referral units across Wales. Data collected during the past 6 school terms indicates that over 10,500 young people have completed 11,043 episodes of counselling, with a median cost per young person of £449.40 and median cost per session of £86.90.

8.105 Advantages

This option would have the advantage of ensuring that local authorities are spending a minimum amount of funding on counselling;

The current situation has been successful with each local authority ensuring that there is access to formal one-to-one counselling in all secondary schools in their area;

The terms and conditions of the grant ensures regular monitoring and evaluation by the local authorities with annual reports and detailed proposals submitted to the Welsh Government;

The terms and conditions of the grant ensure anonymised termly feedback of demographic and outcome data of young people accessing counselling which gives the Welsh Government useful information on an all Wales basis;

The terms and conditions ensure that all services work within an ethical framework e.g. that of the British Association for Counselling and Psychotherapy and provide for regular supervision of and Continuous Professional Development for all counsellors working within schools in Wales;

There is a consistency of approach across Wales in line with the Operating Toolkit for School-based Counselling Services (2009).

8.106 Disadvantages

It would not follow the expectation that ring-fenced grants should operate only for a few years and that there should be local discretion on the level of funding;

The opportunity would be lost to remove the bureaucratic burdens associated with administering the grant;

The grant could be redirected into a new priority within the Welsh Government, leaving the local authorities in an impossible position in trying to maintain counselling services in their area.

Option 2: Transfer funding into the RSG without legislation

8.107 This option would result in administrative cost savings to the Welsh Government. Within the Welsh Government administering the grant involves annual staff costs estimated to be in the region of £29,000. These resources would be able to be redirected elsewhere within the Department.

8.108 It is extremely difficult to estimate the costs associated with administering the grant scheme at local authority level given that the work involved includes bid preparation costs, ongoing administration costs and internal audit costs. Based on previous work undertaken within the Welsh Government to estimate the costs of administering specific grant schemes it is assumed that administrative costs would be at a level of around 2.5% of the value of the grant, which would amount to around £112,000. As some of the administration work would no longer be required an element of this resource would be able to be redirected within the local authority.

8.109 Advantages

Transferring the funding without legislation would provide local authorities with the flexibility to spend the funding according to local need.

Reduced bureaucracy (less data collection/less paperwork).

More streamlined grant funding consistent with the principles of Enabling Government.

After phasing and/or 3 years, allocations would rise in line with expenditure.

8.110 Disadvantages

There is a risk that the funding could be diverted into a range of activities which would not be consistent with the Welsh Government aim to have counselling provision available to school pupils (page 2 School-based Counselling Services in Wales a National Strategy 2008).

Children and young people may not receive the support they need to support their emotional health and wellbeing.

Amount of funding is set at time of transfer and cannot be altered once transferred.

After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation (but the amount could be notionally calculated if needed).

Option 3: Transfer funding into the RSG and introduce legislation

8.111 This option would result in administrative cost savings to the Welsh Government relating to annual staff costs savings estimated to be in the region of £29,000. These resources would be able to be redirected elsewhere within the Department.

8.112 Again, as with option 2 there would be administrative cost savings to the local authority as some of the administration work would no longer be required. This resource would be able to be redirected within the local authority.

8.113 Advantages

Transferring the funding underpinned by legislation will firmly embed the Welsh Government's policy on school based counselling in Wales and ensure that young people continue to have the support they have had since the introduction of the Strategy in 2008.

The duty would largely formalise existing practice. The existing level of budget provision at the point of transfer should therefore provide for reasonable provision, given that there is currently a service available in all secondary schools;

It would provide local authorities with the flexibility to spend the funding according to local need in line with statutory guidance on the provision of formal counselling within an ethical framework.

It would ensure that anonymised outcome and output data continues to be submitted to the Welsh Government. This provides valuable information on a profile of young people accessing counselling.

Reduced bureaucracy (less data collection/less paperwork).

More streamlined grant funding consistent with the principles of Enabling Government.

After phasing and/or 3 years, allocations would rise in line with expenditure.

8.114 Disadvantages

There is the risk that a local authority might provide services at a lower level than under the current arrangements. In these circumstances however, the LA would still need to demonstrate that the provision it made was reasonable. The continued collation of anonymised demographic and outcome data would indicate whether the provision was reasonable.

Amount of funding is set at time of transfer and cannot be altered once transferred.

After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation (but the amount could be notionally calculated if needed).

Preferred Option

8.115 Taking into account the potential administrative cost savings, and broader advantages, disadvantages and risks with each option, Option 3 is determined to be the preferred option.

Free breakfast initiative

8.116 The Primary School Free Breakfast Initiative has been administered via a specific grant to local authorities since September 2004. Payments are made termly in arrears. The grant is complex to administer: for example there are separate sub-heads for funding including food per day per child; rate per day for supervisors (number of supervisors based on ratio of staff to pupils); operational costs per term; training costs for specified courses; CRB checks; set up (dishes, toasters etc) and replacement costs. Transferring the funding to RSG, underpinned by legislation, would reduce the bureaucracy (less data collection/less paperwork) involved in running the grant scheme, both in the Welsh Government and local authorities, in line with the Front Line Resources Review. The current funding mechanism does not provide any incentive to improve value for money – this is more likely to happen when the funding is provided as part of RSG. For example, under the current grant scheme local authorities are able to claim a standard amount of £1,000 (for up to 150 pupils) for initial set-up costs per school. Some schools may have small numbers e.g. 10 children, others larger; e.g. 80, although both would receive the same amount for set-up. A similar arrangement exists for operational costs where an amount of £500 per term can be claimed per school to support the operation of the scheme (includes collation of data and arranging training) regardless of number of pupils involved. Whilst this standardised funding model enables the scheme to be administered more effectively by Welsh Government it does not necessarily deliver

value for money as it does not recognise differing levels of need. By managing the funding at a local level, local authorities would be able to establish the level of need in individual schools and make decisions based on local knowledge.

8.117 At present funding is allocated to local authorities based on demand with a few local authorities having more than 80% of schools involved and with one having less than 2%. As a consequence the funding when transferred to the RSG will result in some local authorities having more funding than they currently receive via a specific grant and others less, and a damping mechanism is likely to be required.

8.118 For all of the options the budget includes provision of £10.7m, £12.7m and £14.7m p.a. for the period 2011-14. This rising baseline provides for an increase in demand over the 3 year period.

Option 1: Do nothing

8.119 Under the specific grant scheme a local authority will receive up to £5,000 per term for administration of the scheme. The amount is dependent on the number of schools participating in the initiative during the term. During 2010-11 a total of around £185,000 was paid to local authorities to administer the scheme. This equates to 1.65% of the grant paid out during the same period.

8.120 For this option, associated costs would change in line with the factors identified in paragraph 3.56. Under the current grant scheme annual administration costs would be expected to continue at similar levels to that for 2010-11. If a 100% of schools were to participate the maximum that could be claimed for annual administration costs would be £229,500.

8.121 Advantages

Where there is a request by a primary school for free breakfasts and there is demand by pupils attending that school the Welsh Government will provide funding as outlined above;

The current approach has been successful and the Annual School Census 2011 indicated that 1,052 primary schools reported that they were providing free breakfasts.

The terms and conditions of the grant requires termly monitoring by the local authorities;

The terms and conditions of the grant require that this provision is provided within a common framework which facilitates a consistent approach across Wales.

8.122 Disadvantages

It would not follow the expectation that ring-fenced grants should operate only for a few years and that there should be local discretion on the level of funding;

The grant scheme is bureaucratic to administer;

The grant scheme uses a standardised funding model and does not take into account actual costs associated with delivering the initiative at a local

level. For example, salary costs will vary but a standardised hourly rate of £8.44 is reimbursed by the Welsh Government for breakfast staff.

The grant scheme does not encourage efficiencies in operating the initiative e.g. a breakfast club catering for 20 children of primary age could, using the funding model, employ three staff whereas they may only require two.

Difficult to effectively manage a demand led budget across 22 local authority areas.

Option 2: Transfer funding to RSG without legislation:

8.123 This option would provide the opportunity to achieve some savings associated with administration costs.

8.124 Within the Welsh Government, administering the grant involves annual staff costs in the region of £15,000. These resources would be able to be redirected elsewhere within the Department.

8.125 During 2010-11 a total of £185,000 was paid to local authorities to administer the scheme; some of the work would no longer be required, though it is difficult to firmly establish at this stage what proportion this might be. However, some resource would be able to be redirected within the local authority.

8.126 The use of a damping mechanism could potentially result in some resource implications, though at this stage any such implications have not been assessed.

8.127 Advantages

Transferring the funding without legislation would provide local authorities with the flexibility to spend the funding according to local need.

Less bureaucracy (less data collection/less paperwork).

More streamlined grant funding consistent with the principles of Enabling Government.

After phasing and/or 3 years, allocations would rise in line with expenditure.

8.128 Disadvantages

There is a risk that the funding could be diverted into a range of activities which would not be consistent with the Welsh Government commitment to maintain this initiative.

Amount of funding is set at time of transfer and cannot be altered once transferred.

Allocations would have to be based on a formula rather than direct cost, but this can be phased in over a 3 year period.

After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation (but the amount could be notionally calculated if needed).

Option 3: Introduce legislation and transfer funding to RSG

8.129 For this option, the budget would be transferred to RSG at a point when it had been increased by £2m allowing for continued expansion of breakfast provision.

8.130 As for option 2, this option would provide the opportunity to achieve some savings associated with administration costs.

8.131 Within the Welsh Government, administering the grant involves annual staff costs in the region of £15,000. These resources would be able to be redirected elsewhere within the Department.

8.132 During 2010-11 a total of £185k was paid to local authorities to administer the scheme; some of the work would no longer be required. Therefore some resource would be able to be redirected within the local authority.

8.133 .Advantages

Transferring the funding underpinned by legislation would ensure that where demand exists, local authorities will provide or continue to provide free breakfasts unless it is unreasonable to do so;

The duty would largely formalise existing practice;

The budget to be transferred to RSG should provide for existing provision to continue and for more schools/children to participate (unless it was unreasonable to do so);

It would provide local authorities with the flexibility to spend the funding according to local need in line with statutory guidance on the provision of free breakfasts;

Less bureaucracy (less data collection/less paperwork).

More streamlined grant funding consistent with the principles of Enabling Government.

After phasing and/or 3 years, allocations would rise in line with expenditure.

8.134 Disadvantages

There is a possibility that local authorities might decide not to provide or continue to provide breakfast. In these circumstances however, the authority would need to demonstrate that it would be unreasonable to make this provision available. The continued collation of data through the Annual School Census would indicate whether the provision was reasonable.

Amount of funding is set at time of transfer and cannot be altered once transferred.

Allocations would have to be based on a formula rather than direct cost, but this can be phased in over a 3 year period.

After three years it would be difficult to identify the amount of money allocated for the specific grant as it is incorporated into the relevant service area allocation (but the amount could be notionally calculated if needed).

Preferred Option

8.135 Taking into account the potential cost savings, and other advantages, disadvantages and risks associated with the options, Option 3 is determined to be the preferred option as it would ensure the continuation of this provision when funding is transferred to the Revenue Support Grant.

Flexible Charging for School Meals

Option 1: Do nothing

8.136 The Do Nothing option would not give rise to additional costs or benefits, maintaining the existing arrangements.

8.137 Advantages

Systems established at local authority and school level to charge every person the same price for the same quantity of the same item.

8.138 Disadvantages

The current approach does not allow meal providers to vary prices or to offer discounts. For example if there are three children of school age in the same family and the charge per day per meal is £2, this could cost the family £30 per week. There is no scope to reduce the charge for the second and third child.

There is no cap on the amount that can be charged to pupils for a school meal.

This approach restricts local authorities' and schools' ability to be innovative in seeking to increase the take-up of school meals and to tackle poor diet.

Option 2: Utilise the Power to Innovate

8.139 It is anticipated that there would be some initial set up and ongoing costs depending on how the power to innovate is used at a local level. Costs might include staff costs for schools and local authorities, Welsh Ministers' time for evaluating each application, administration, monitoring and systems costs. It is not possible to estimate what those costs would be, given the range of approaches that could be used.

8.140 The benefits associated with the use of a Power to innovate would depend on the nature and use of proposed flexible charging schemes. The full impacts of such schemes would need to be assessed in the light of specific proposals.

8.141 Advantages

Legislation exists to facilitate the piloting of flexible charging for school meals.

8.142 Disadvantages

This approach is bureaucratic. The power to charge flexibly is dependent on:

- (i) local authorities (or governing bodies with a delegated budget) making an application to the Welsh Ministers to pilot flexible charging; and
- (ii) the Welsh Ministers being satisfied that the requirements to make an Order under the 2002 Act are satisfied.

This process would be time-consuming and would take significant forward planning by schools and the local authority who must consult persons set out in section 4(2) of the 2002 Act before submitting an application. This would have resource implications for the Welsh Government, schools and local authorities;

Each case must be handled individually, and each Order is time-limited (generally lasting for a maximum of 3 years);

the policy intention for a universal power would not be achieved unless all local authorities in Wales and governing bodies of schools with delegated budgets make an application to pilot flexible charging and the Welsh Ministers make an Order in relation to those authorities/bodies.

Option 3: Amend existing legislation

8.143 It is anticipated that there would be some initial set up and ongoing costs, for example, administration, monitoring and systems costs, depending on the flexible approach that is adopted at a local level. Given the range of approaches that could be used costs will vary. It is therefore not possible to give accurate costings. However, if a school meal provider were, for example, to allow the new intake to have free meals for a week it could cost in the region of £1.80 per day per child. If we assume 30 children in a class and 100% take-up that would cost $30 \times 5 \times £1.80 = £270$ per school. This does not take into account that some children may already be eligible for free school meals; not all children may take-up the offer of a free school meal and may prefer to bring a packed lunch; number of pupils per school will vary. The saving associated with collecting and banking the dinner money for these pupils could be offset against any administration costs. In terms of ongoing monitoring, whilst there would be some costs it is anticipated they would be minimal given school meal providers would already collect some data on take-up.

8.144 The benefits associated with this option would depend on the nature and use of proposed flexible charging schemes. The full impacts of such schemes would need to be assessed in the light of specific proposals.

8.145 Given the intention to cap the price charged to pupils, the use of this flexibility by local authorities would have financial implications for them, and therefore potential impacts on other services, given fixed budgets. Again, this would need to be considered in respect of specific proposals where these are made.

8.146 Advantages

The price charged to pupils for a school meal would be capped at the cost of producing that meal;

Discounts and promotional offers could be used to encourage take-up of healthier options;

This provision could be used flexibly to meet local needs - for example, a local authority could decide to extend free school meals to include families who meet specific criteria;

Potentially increased take-up of school meals.

8.147 Disadvantages

School meal providers would have to assess the impacts of the specific proposals to establish whether the flexible approach they are considering adopting would be beneficial. This would have some resource implication

Depending on the flexible approach used, school meal providers would need to subsidise the cost of the school meal, this could be short, medium or long term. Catering budgets are tight, and the cost of subsidising school meals could deter some local authorities from using flexible charging. However, at a more strategic level, having more children and young people eating a healthy balanced diet and developing good eating habits could reduce the amount spent on tackling obesity;

Again, depending on the flexible approach used, there could be some administration challenges, for example where a family has three children in school and the children attend different schools within the local authority area.

There is a risk that charging different pupils different amounts for the same or similar meals might be perceived as unfair by parents whose children pay full price for meals, and give rise to complaints.

Preferred option

8.148 Taking into account the relative costs, benefits, disadvantages and advantages on balance Option 3 would be the preferred option. This option would provide the flexibility to be innovative in trialling approaches to increasing uptake of school meals alongside wider work on improving the nutritional standards of school food and combating child poverty. It also ensures that the charge for a school meal cannot exceed the costs associated with its production.

9. Competition Assessment

9.1 The provisions within the Bill will not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition.

9.2 There is therefore no need for the competition filter to be applied in this case.

10. Post implementation review

Intervention of Schools causing concern

10.1 The Welsh Government will review the legislation one year on from implementation seeking views of Estyn and local authorities on its impact.

10.2 Estyn will continue to be responsible for inspecting schools as part of its inspection cycle and for considering whether the school is failing to give their pupils an acceptable standard of education and is causing concern. The Welsh Government will continue to monitor the number and circumstances of schools causing concern and the number and circumstances of warning notices issued in response.

10.3 The School Standards Unit¹¹ through its stock takes and banding work will have a role in monitoring school standards.

10.4 Officials engage with a variety of stakeholders in a number of different ways including, meetings, conferences and correspondence. School improvement and intervention will continue to be included in the Department for Education and Skills dialogue with stakeholders including Estyn, Welsh Local Government Association, Association of Directors of Education (ADEW) Regional Consortia and local authorities. We will continue to collect data on schools causing concern to ascertain whether the legislation has led to an improvement in practice.

School Improvement

10.5 INTERNAL

- **School Standards Unit**
Review results of ongoing stock take exercises conducted by the School Standards Unit to monitor the sharing of best practice and evaluate policy implementation.
- **Quality Assurance Groups**
The Learning Improvement and Professional Development (LIPD) Division¹² have appointed a Quality Assurance Group to lead the development of high reliability teaching strategies. In addition, LIPD will establish a Gatekeeping Group, comprising of serving practitioners to test draft statutory school improvement guidance prior to issue.
- **Non Compliance**
Prior to the issue of statutory school improvement guidance, LIPD will identify policy/legal contacts to handle written requests from school authorities to depart from statutory guidance.

¹¹ Now known as School Standards and Delivery Division

¹² Now known as School Standards and Delivery Division

10.6 EXTERNAL

- **Estyn Advice**
Review evidence within the Estyn Annual Report 2013-14 to assess improvements in terms of school self evaluation and improvement planning and increased leading sector practice. Commission bespoke Estyn research focusing specifically on school improvement and the impact on classroom practice.
- **Independent evaluations**
Longer term review of policies impacting on the school improvement agenda i.e. high reliability teaching strategies; professional learning communities.
- **Ongoing review of delivery of Minister's Top 20 Priorities¹³**
External Stakeholder Group.
- **Review of targets outlined in the report on the Structure of the Delivery of Education in Wales (Vivian Thomas).**
Possibility of a further review in 2013¹⁴.
- **Impact Assessment – Programme of School Reform**
Longer term assessment of the impact of school improvement tools, strategies and techniques and the overarching Programme of School Reform.

School Organisation

10.7 The proportion of school organisation decisions taken at the local level will be monitored through the ongoing analysis of Welsh Government data on school organisation proposals, the latter being gathered from the information that proposers and determiners will be required by provisions in the Bill to send to the Welsh Ministers at various points in the new statutory process.

10.8 Greater local authority effectiveness in the planning of school places will be monitored by reference to measurements which include:

the number of local authorities with more than 10% of their school places surplus (by analysis of the local authority school places data provided annually);

the number of local authorities rated good by Estyn for school organisation planning in Estyn local authority inspections (by annual analysis of Estyn local authority reports) ; and,

the average time taken for published proposals to receive final determination (by an ongoing analysis of Welsh Government school organisation data).

¹³ Now subsumed under the 'Improving Schools' Plan – the National Implementation Plan for 3 to 16 education in Wales

¹⁴ The Minister for Education and Skills announced a review of education delivery on 21 November 2012

10.9 Findings arising from this monitoring would determine the need for any future review of the new legislative framework. It is unlikely that any conclusions about the need for a review could be made until the system has been properly embedded and sufficient data obtained. This would potentially be for a period of three years or more. Therefore no general review would be likely to take place before 2016¹⁵.

10.10 In the meantime, it is possible that a review or reviews focussing specifically on aspects of the regulated alterations might be undertaken should that be necessary in the light of ongoing policy developments.

Welsh in Education Strategic Plans

10.11 Once the proposed Bill and subordinate legislation is in place progress on implementing the new legislation and its impact will be monitored through annual monitoring meetings with representatives of the local authorities. Progress will also be discussed at the annual Ministerial Advisory Group on the Welsh-medium Education Strategy, which includes representatives of all phases of education and training.

10.12 In relation to improving standards of education, the Welsh Government continuously monitors the efficiency and effectiveness of local authority school provision through the collection of data and Estyn inspection evidence.

10.13 The Welsh-medium Education Strategy will be subject to full evaluation, which will commence in 2012. A formal review of the Strategy will take place in 2015, which will include reviewing the effectiveness of the WESPs in improving the planning of Welsh-medium education and in achieving the outcomes set out in Section 3.

Annual Parents Meeting

10.14 Officials will monitor the impact of the new legislation through our regular stakeholder/official meetings. Officials meet representatives of the Association of Directors of Education in Wales Governor Support Officers' network three times a year and attend their annual conference, and meet quarterly with Governors Wales.

School-based counselling

10.15 Officials will monitor the impact of the new legislation through the anonymised demographic and outcome data on children and young people accessing counselling provided by local authorities.

Free Breakfast Initiative

10.16 Schools will continue to provide take-up data annually in the form of a Pupil Level Annual School Census return to the Welsh Government.

¹⁵ Consideration is, however, being given to an early review of the operation and costs of LDPs.

Flexible Charging of School Meals

10.17 Following 12 months after commencement of this legislation the Welsh Government would seek feedback from local authorities as to whether they have used this power and if so in what way and what was the impact. Given the scale of use of flexible changing the requirement for more formal assessments of the impacts may also be subsequently considered.

ANNEX A - TABLE OF DERIVATION

This document is intended as an informal aid to debate on the Bill in the National Assembly for Wales. While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.

The attached table is intended to provide information on the derivation of the provisions of the School Standards and Organisation (Wales) Bill. The table does not provide definitive or exhaustive guidance, and should be read in conjunction with the Bill and with the explanatory notes on the Bill.

KEY TO ABBREVIATIONS

EA 1996 – Education Act 1996

EA 2002 – Education Act 2002

EA 2005 – Education Act 2005

LSA 2000 – Learning and Skills Act 2000

SSFA 1998 – School Standards and Framework Act 1998

SI 1999/1671 – The Education (School Organisation Proposals) (Wales) Regulations
1999

SI 1999/1780 – The Education (Maintained Special Schools) (Wales) Regulations
1999

SI 2001/2678 – The Change of Category of Maintained Schools (Wales) Regulations
2001

SI 2004/1576 – The School Organisation Proposals by the National Assembly for
Wales Regulations 2004

S. – section

R. – regulation

P. – paragraph

Sch. - Schedule

| TABLE OF DERIVATIONS | | |
|--|--|----------------------------|
| SECTION / PARAGRAPH | CORRESPONDING REFERENCE IN EXISTING LEGISLATION | SUBSTANTIVE CHANGE? |
| PART 1 : INTRODUCTION | | |
| 1 | New | - |
| PART 2 : STANDARDS | | |
| CHAPTER 1 – INTERVENTION IN CONDUCT OF MAINTAINED SCHOOLS | | |
| 2 | Ground 1: S.15(2)(a)(i) SSFA 1998 | No |
| | Ground 2: S.15(2)(a)(ii) SSFA 1998 | No |
| | Ground 3: S.62 SSFA 1998 | No |
| | Ground 4: S.15(2)(a)(iii) SSFA 1998 | No |
| | Ground 5: new, but based partly on S.497 EA 1996 and S.15(2)(a)(iv) and (v) SSFA 1998 | - |
| | Ground 6: new, but based partly on S.496 EA 1996 and S.15(2)(a)(iv) and (v) SSFA 1998 | - |
| | Ground 7: S.15(4) SSFA 1998 | No |
| | Ground 8: S.15 (6) SSFA 1998 | No |
| 3 | S.15 SSFA 1998 | Yes |
| 4 | S. 14 and S.15 SSFA 1998 | Yes |
| 5 | New | - |
| 6 | S.16 SSFA 1998 | Yes |
| 7 | S16A SSFA 1998 | Yes |
| 8 | S.17 SSFA 1998 | No |
| 9 | New | - |
| 10 | New | - |
| 11 | Partly S.18, S.18A, S.18B, S.19, S.19ZA and 19A SSFA 1998, partly new | Yes/- |
| 12 | New | - |
| 13 | S.18 SSFA 1998 | Yes |
| 14 | S.18A SSFA 1998 | Yes |

| | | |
|-------------------------------------|--|-------|
| 15 | S.18B SSFA 1998 | Yes |
| 16 | S.19 SSFA 1998 | Yes |
| 17 | S.496 EA 1996 and S.497 EA 1996 | Yes |
| 18 | S.19A and Sch. 1A SSFA 1998 | No |
| 19 | S.496 EA 1996 and S.497 EA 1996 | Yes |
| 20 | New | - |
| CHAPTER 2 | | |
| 21 | S.496, 497 and 497A EA 1996 | No |
| 22 | New | - |
| 23 | Partly S.496, 497 and 497A EA 1996, partly new | Yes/- |
| 24 | S.63 EA 2002 | No |
| 25 | S.497A EA 1996 | No |
| 26 | S.497A EA 1996 | No |
| 27 | S.497A EA 1996 | No |
| 28 | S.496, 497 and 497A EA 1996 | Yes |
| 29 | S.496, 497 and 497A EA 1996 | No |
| 30 | S.497AA EA 1996 and S.497B EA 1996 | No |
| 31 | S.497A EA 1996 and S.497B EA 1996 | No |
| CHAPTER 3 | | |
| 32 | New | - |
| 33 | New | - |
| 34 | New | - |
| 35 | New | - |
| 36 | New | - |
| 37 | New | - |
| PART 3 : SCHOOL ORGANISATION | | |
| CHAPTER 1 | | |
| 38 | New | - |
| 39 | New | - |
| CHAPTER 2 | | |
| 40 | S.28(11) and S.33 SSFA 1998 | Yes |

| | | |
|------------------|---|------|
| 41 | S.28 SSFA 1998 | No |
| 42 | S.28 SSFA 1998 | Yes |
| 43 | S.29 SSFA 1998 | No |
| 44 | S.31 SSFA 1998 | Yes |
| 45 | S.35 and P.1 Sch 8 SSFA 1998 | Yes |
| | | |
| 46 | S.35 and P.4 Sch 8 SSFA 1998 and R.5 SI 2001/2678 | No |
| 47 | S.35 and P.6 Sch 8 SSFA 1998 | No |
| 48 | New | - |
| 49 | Ss 28. 29. 31 and P.7 Sch 6 SSFA 1998 | Yes |
| 50 | New | - |
| 51 | New | - |
| 52 | New | - |
| 53 | New | - |
| 54 | Ss 28. 29. 31 and P.9 Sch 6 SSFA 1998 | Yes |
| 55 | Ss 28. 29. 31 and P.10 Sch 6 SSFA 1998 | Yes |
| 56 | New | - |
| CHAPTER 3 | | |
| 57 | S. 34 and P.2 – P.3 Sch 7 SSFA 1998 | No |
| 58 | S. 34 and P.4 Sch 7 SSFA 1998 | No |
| 59 | S. 34 and P.5 Sch 7 SSFA 1998 | No |
| 60 | S. 34 and P.12 Sch 7 SSFA 1998 | No |
| 61 | S. 34 and P.13 Sch 7 SSFA 1998 | No |
| 62 | S. 34 and P.14 Sch 7 SSFA 1998 | No |
| 63 | S. 34 and P.15 Sch 7 SSFA 1998 | No |
| CHAPTER 4 | | |
| 64 | S.191 EA 2002 | No |
| 65 | S.191 EA 2002 | No |
| 66 | S.192 EA 2002 | No |
| 67 | Partly S.192 EA 2002, partly new | No/- |
| 68 | S.193 EA 2002 | No |

| | | |
|--|---|-------|
| 69 | New | - |
| 70 | New | - |
| CHAPTER 5 | | |
| 71 | S.113A LSA 2000 | Yes |
| 72 | S.113A LSA 2000 and R. 4 - R. 6 SI 2004/1576 | Yes |
| 73 | S.113A LSA 2000, R.8A SI 2004/1576 | Yes |
| 74 | S.113A and P.1 Sch 7A LSA 2000 | No |
| 75 | S.113A and P.2 - P.4 Sch 7A LSA 2000 | No |
| 76 | S.113A and P.5 - P.7 Sch 7A LSA 2000 | No |
| 77 | S. 113 and P 1 – P6 Sch 7 LSA 2000 and part new | Yes/- |
| CHAPTER 6 | | |
| 78 | S 68 EA 2005 | No |
| 79 | S 69 EA 2005 | No |
| 80 | S.30 SSFA 1998 | No |
| 81 | S.32 SSFA 1998 | No |
| 82 | Ss 28. 29. 31 and P.22 Sch 6 SSFA 1998 | No |
| 83 | New | - |
| PART 4 : WELSH IN EDUCATION STRATEGIC PLANS | | |
| 84 | New | - |
| 85 | New | - |
| 86 | New | - |
| 87 | New | - |
| PART 5 : MISCELLANEOUS SCHOOLS FUNCTIONS | | |
| 88 | New | - |
| 89 | New | - |
| 90 | New | - |
| 91 | New | - |
| 92 | New | - |
| 93 | New | - |
| 94 | New | - |

| | | |
|--|---|-----|
| 95 | New | - |
| 96 | New | - |
| PART 6 : GENERAL | | |
| 97 | New | - |
| 98 | New | - |
| 99 | New | - |
| 100 | New | - |
| 101 | New | - |
| SCHEDULE 1 : GOVERNING BODIES CONSISTING OF INTERIM EXECUTIVE MEMBERS | | |
| 1 | S.19A and P.1 Sch. 1A SSFA 1998 | No |
| 2 | S.19A and P.2 Sch. 1A SSFA 1998 | No |
| 3 | S.19A and P.3 Sch. 1A SSFA 1998 | No |
| 4 | S.19A and P.4 Sch. 1A SSFA 1998 | No |
| 5 | S.19A and P.5 Sch. 1A SSFA 1998 | No |
| 6 | S.19A and P.6 Sch. 1A SSFA 1998 | Yes |
| 7 | S.19A and P.7 Sch. 1A SSFA 1998 | No |
| 8 | S.19A and P.8 Sch. 1A SSFA 1998 | No |
| 9 | S.19A and P.9 Sch. 1A SSFA 1998 | Yes |
| 10 | S.19A and P.10 Sch. 1A SSFA 1998 | No |
| 11 | S.19A and P.11 Sch. 1A SSFA 1998 | Yes |
| 12 | S.19A and P.12 Sch. 1A SSFA 1998 | No |
| 13 | S.19A and P.13 & P.14 Sch. 1A SSFA 1998 | Yes |
| 14 | S.19A and P.15 and P.16 Sch. 1A SSFA 1998 | No |
| 15 | S.19A and P.17 Sch. 1A SSFA 1998 | Yes |
| 16 | S.19A and P.18 Sch. 1A SSFA 1998 | No |
| 17 | S.19A and P.19 Sch. 1A SSFA 1998 | No |
| SCHEDULE 2 : REGULATED ALTERATIONS | | |
| 1 | New | - |
| 2 | S 28 and 31 SSFA 1998 and R. 3, 3A and P.8 Sch 2 and P. 5 of Sch 2A SI 1999/1671 and R. 3 and P. 7 Sch 1 SI 1999/1780 | Yes |
| 3 | S 28 and 31 SSFA 1998 and R. 3, 3A P.5 Sch | No |

| | | |
|-----------|---|--------------|
| | 2 and P.3 Sch 2A SI 1999/1671 and R. 3 and P.3 Sch 1 SI 1999/1780 | |
| 4 | New | - |
| 5 | S 28 and 31SSFA 1998 and R. 3, P.2 Sch 2 SI 1999/1671 and R. 3 and P.2 Sch 1 SI 1999/1780 | No |
| 6 | Based on S 28 and 31 SSFA 1998 and R. 3, P.2 Sch 2 SI 1999/1671 and R. 3 and P.2 Sch 1 SI 1999/1780 partly new | Yes/- |
| 7 | S 28 and 31 SSFA 1998 and R. 3, P.6 Sch 2 SI 1999/1671 and R. 3 and P.6 Sch 1 SI 1999/1780 | Yes |
| 8 | S 28 and 31 SSFA 1998 and R. 3, P.6 Sch 2 SI 1999/1671 and R. 3 and P.6 Sch 1 SI 1999/1780 | No |
| 9 | New | - |
| 10 | S 28 SSFA 1998 and R. 3, P.1 Sch 2 SI 1999/1671 | No |
| 11 | S 28 SSFA 1998 and R. 3, P.1 Sch 2 SI 1999/1671 | No |
| 12 | S 28 SSFA 1998 and R. 3, P.1 Sch 2 SI 1999/1671 | No |
| 13 | New | - |
| 14 | S 28 SSFA 1998 and Rs. 2 and 3, P.1 Sch 2 SI 1999/1671 | No |
| 15 | S 28 SSFA 1998 and R. 3, P.3 Sch 2 SI 1999/1671 | No |
| 16 | S 28 SSFA 1998 and R. 3, P.4 Sch 2 SI 1999/1671 | No |
| 17 | S 28 SSFA 1998 and R. 3, P.7 Sch 2 SI 1999/1671 | No |
| 18 | New | - |
| 19 | S. 31 SSFA 1998 and R. 3 and P.1 Sch 1 SI 1999/1780 | No |
| 20 | S. 31 SSFA 1998 and R. 3 and P.4 Sch 1 SI 1999/1780 | No |
| 21 | S. 31 SSFA 1998 and R. 3 and P.5,Sch 1 SI 1999/1780 | No |
| 22 | New | - |

| | | |
|---|---|-------|
| 23 | S.28 SSFA 1998 and R.3A and P.1 Sch 2A SI 1999/1671 | No |
| 24 | S.28 SSFA 1998 and R.3A and P.2 Sch 2A SI 1999/1671 | No |
| 25 | S.28 SSFA 1998 and R.3A and P.4 Sch 2A SI 1999/1671 | No |
| 26 | Ss 28 and 31 SSFA 1998 / partly new | Yes/- |
| SCHEDULE 3 : LOCAL DETERMINATION PANELS | | |
| 1 | New | - |
| 2 | New | - |
| 3 | New | - |
| 4 | New | - |
| 5 | New | - |
| 6 | New | - |
| 7 | New | - |
| 8 | New | - |
| 9 | New | - |
| 10 | New | - |
| 11 | New | - |
| 12 | New | - |
| 13 | New | - |
| 14 | New | - |
| SCHEDULE 4 : IMPLEMENTATION OF STATUTORY PROPOSALS | | |
| 1 | New | - |
| 2 | Ss 28, 29 and 31 and P.12 Sch 6 SSFA 1998 | No |
| 3 | Ss 28, 29 and 31 and P.13 Sch 6 SSFA 1998 | No |
| 4 | Ss 28, 29 and 31 and P.14 Sch 6 SSFA 1998 | No |
| 5 | Ss 28, 29 and 31 and P.15 Sch 6 SSFA 1998 | No |
| 6 | New | - |
| 7 | Ss 28, 29 and 31 and P.16 Sch 6 SSFA 1998 | No |
| 8 | Ss 28, 29 and 31 and P.17 Sch 6, SSFA 1998 | No |
| 9 | Ss 28, 29 and 31 and P.18 Sch 6 SSFA 1998 | No |
| 10 | Ss 28, 29 and 31 and P.19 Sch 6 SSFA 1998 | No |

| | | |
|--|---|----|
| 11 | Ss 28, 29 and 31 and P.20 Sch 6 SSFA 1998 | No |
| 12 | Ss 28, 29 and 31 and P.22 Sch 6 SSFA 1998 | No |
| SCHEDULE 5 : IMPLEMENTATION OF PROPOSALS TO CHANGE CATEGORY OF SCHOOL | | |
| 1 | New | - |
| 2 | S. 35 SSFA 1998 and R.8 SI 2001/2678 | No |
| 3 | S. 35 SSFA 1998 and R.9 and P.1 – P.6 Sch 2 SI 2001/2678 | No |
| 4 | S. 35 SSFA 1998 and R.9 and P.7 – P.12 Sch 2 SI 2001/2678 | No |
| 5 | S. 35 SSFA 1998 and R.9 and P.13 Sch 2 SI 2001/2678 | No |
| 6 | S. 35 SSFA 1998 and R.16 and P.1 Sch 4 SI 2001/2678 | No |
| 7 | S. 35 SSFA 1998 and R.16 and P.1 Sch 4 SI 2001/2678 | No |
| 8 | S. 35 SSFA 1998 and R.16 and P.1 Sch 4 SI 2001/2678 | No |
| 9 | S. 35 SSFA 1998 and R.16 and P.2 Sch 4 SI 2001/2678 | No |
| 10 | S. 35 SSFA 1998 and R.16 and P.4 Sch 4 SI 2001/2678 | No |
| 11 | S. 35 SSFA 1998 and R.16 and P.4 Sch 4 SI 2001/2678 | No |
| 12 | S. 35 SSFA 1998 and R.16 and P.5 Sch 4 SI 2001/2678 | No |
| 13 | S. 35 SSFA 1998 and R.16 and P.5 Sch 4 SI 2001/2678 | No |
| 14 | S. 35 SSFA 1998 and R.16 and P.6 Sch 4 SI 2001/2678 | No |
| 15 | S. 35 SSFA 1998 and R.16 and P.6 Sch 4 SI 2001/2678 | No |
| 16 | S. 35 SSFA 1998 and R.16 and P.7 Sch 4 SI 2001/2678 | No |
| 17 | S. 35 SSFA 1998 and R.16 and P.8 Sch 4 SI 2001/2678 | No |
| 18 | S. 35 SSFA 1998 and R.16 and P.8 Sch 4 SI 2001/2678 | No |
| 19 | S. 35 SSFA 1998 and R.16 and P.9 Sch 4 SI 2001/2678 | No |

| | | |
|----|---|----|
| 20 | S. 35 SSFA 1998 and R.16 and P.9 Sch 4 SI 2001/2678 | No |
| 21 | S. 35 SSFA 1998 and R.16 and P.11 Sch 4 SI 2001/2678 | No |
| 22 | S. 35 SSFA 1998 and R.16 and P.11 Sch 4 SI 2001/2678 | No |
| 23 | S. 35 SSFA 1998 and R.16 and P.16 Sch 4 SI 2001/2678 | No |
| 24 | S. 35 SSFA 1998 and R.16 and P.12 Sch 4 SI 2001/2678 | No |
| 25 | S. 35 SSFA 1998 and R.16 and P.12 Sch 4 SI 2001/2678 | No |
| 26 | S. 35 SSFA 1998 and R.16 and P.14 Sch 4 SI 2001/2678 | No |
| 27 | S. 35 SSFA 1998 and R.16 and P.15 Sch 4 SI 2001/2678 | No |
| 28 | S. 35 SSFA 1998 and R.16 and P.17 Sch 4 SI 2001/2678 | No |
| 29 | S. 35 SSFA 1998 and R.16 and P.18 Sch 4 SI 2001/2678 | No |
| 30 | S. 35 SSFA 1998 and R.16 and P.18 Sch 4, SI 2001/2678 | No |
| 31 | S. 35 SSFA 1998 and R.16 and P.18 Sch 4 SI 2001/2678 | No |
| 32 | S. 35 SSFA 1998 and R.16 and P.19 Sch 4 SI 2001/2678 | No |
| 33 | S. 35 SSFA 1998 and R.16 and P.19 Sch 4 SI 2001/2678 | No |
| 34 | S. 35 SSFA 1998 and R.16 and P.19 Sch 4 SI 2001/2678 | No |
| 35 | S. 35 SSFA 1998 and R.16 and P.19 Sch 4 SI 2001/2678 | No |
| 36 | S. 35 SSFA 1998 and R.16 and P.19 Sch 4 SI 2001/2678 | No |
| 37 | S. 35 SSFA 1998 and R.16 and P.20 Sch 4 SI 2001/2678 | No |
| 38 | S. 35 SSFA 1998 and R.16 and P.21 Sch 4 SI 2001/2678 | No |
| 39 | S. 35 SSFA 1998 and R.16 and P.22 Sch 4 SI 2001/2678 | No |

| | | |
|--|---|----|
| 40 | S. 35 SSFA 1998, Sch. 8, P. 5 | No |
| 41 | S. 35 SSFA 1998 and R.17 – R.18 SI 2001/2678 | No |
| SCHEDULE 6 : MINOR AND CONSEQUENTIAL AMENDMENTS | | |
| Contains minor and consequential amendments | | |

ANNEX B – EXPLANATORY NOTES

Introduction

1. These Explanatory Notes relate to the School Standards and Organisation (Wales) Bill introduced into the National Assembly for Wales on 24 April 2012.
2. They have been prepared by the Welsh Government's Department for Education and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where a section of the Bill does not seem to require any explanation or comment, none is given.
4. The powers to make the Bill are contained in Part 4 and Schedule 7 of the Government of Wales Act 2006. The National Assembly for Wales has the legislative competence to make provision for and in connection with School Standards and Organisation Bill by virtue of Schedule 7, subject 5 (education and training) and subject 9 (health and health services).
5. In these Explanatory Notes, "the 1998 Act" means the School Standards and Framework Act 1998.

Commentary on Sections

Part 1 - Introduction

Section 1 – Overview of this Bill

6. This section provides an overview of the key provisions of the Bill. The Bill has 6 parts and 5 schedules.

Part 2 - Standards

Chapter 1 - Intervention in Conduct of Maintained Schools

7. This Chapter, and Chapter 2 of Part 2, reforms the existing law in respect of intervention by local authorities and Welsh Ministers in the conduct of schools maintained by local authorities and intervention by Welsh Ministers in the exercise of education functions by local authorities.
8. Generally, it will be for the local authority to take action in respect of schools causing concern in the first instance, and the Welsh Ministers will generally only take action where the authority has failed to do so, or where it has taken action, it has done so inadequately.

Grounds for intervention

Section 2 – Grounds for intervention

9. This section sets out the eight grounds for intervention by a local authority or the Welsh Ministers in a maintained school.

10. The grounds for intervention set out in this section replace the grounds set out in section 15(2)(a) of the School Standards and Framework Act 1998 (“the 1998 Act”), with amendments. In addition grounds 5 and 6 are based on the Welsh Ministers’ intervention powers in sections 497 and 496 respectively of the Education Act 1996 (governing body’s unreasonable action or failure to comply with a duty). Stating provisions of sections 496 and 497 of the Education Act 1996 here means that local authorities as well as the Welsh Ministers can intervene in the conduct of a maintained school on the basis of a governing body’s failure to comply with a duty or its unreasonable action. Grounds 5 and 6 also now include reference to a head teacher’s failure to comply with a duty or unreasonable action.

Intervention by a local authority

Section 3 – Warning notice

11. This section provides that if one or more of Grounds 1 to 6 set out in section 2 exist the local authority may give a warning notice to the governing body of a school, and specifies what information a warning notice must contain. The warning notice is generally the start of the process of intervention by a local authority in a school and may lead to the powers of intervention being exercised by it.

Section 4 – Power to intervene

12. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by a local authority. The powers of intervention are set out in sections 5 to 9.

13. Where a local authority is satisfied that one or more of Grounds 1 to 6 exist, and it has complied with the warning notice procedure set out in section 3, then it may exercise its powers of intervention. However, if a local authority believes that one or more of Grounds 1 to 6 exist and also believes there is a related risk to health and safety of any person that calls for urgent action then it does not have to comply with the warning notice procedure before exercising its powers of intervention.

14. In addition, the local authority may exercise its powers of intervention if it is satisfied that Grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the local authority does not have to issue a warning notice.

Section 5 – Power to require governing body to secure advice or collaborate

15. This section provides a new power for a local authority to direct the governing body of a school to make arrangements or enter into a contract for the provision of

advisory services or to collaborate in accordance with section 5(2) of the Education (Wales) Measure 2011, so as to improve the school's performance.

Section 6 – power to appoint additional governors

16. This section replaces the intervention power in section 16 of the 1998 Act, and provides local authorities with a power to appoint additional governors to the governing body of a maintained school.

Section 7 – Power of local authority to constitute governing body of interim executive members

17. This section replaces the intervention power in section 16A of the 1998 Act. It provides local authorities with a power to appoint a specially constituted governing body in place of the existing governors at a school where the local authority has a power to intervene. The specially constituted governing body is known as an interim executive board and it will take over the running of the school. Schedule 1 makes further provision about interim executive boards.

Section 8 – Power of local authority to suspend right to delegated budget

18. Under section 49 of the 1998 Act all maintained schools have a right to a delegated budget, which means that their governing bodies are entitled to manage the school's budget. This section replaces the intervention power in section 17 of the 1998 Act, and provides a power for local authorities to suspend a school's right to a delegated budget if a local authority has the power to intervene in the school.

Section 9 – General power to give directions and take steps

19. This section provides a general power for local authorities to issue such directions to the governing body or head teacher of a school it maintains as it thinks appropriate and to take any other steps when one or more of the grounds for intervention exist.

20. This section replaces section 62 of 1998 Act (*local authority's power to prevent a breakdown of discipline*). It also provides for local authorities to have powers similar to the Welsh Ministers' intervention powers in sections 496 and 497 of the Education Act 1996 (but unlike sections 496 and 497, the power to intervene here is not limited to those cases where Grounds 5 or 6 exist).

Intervention by the Welsh Ministers

Section 10 – Warning notice

21. This section sets out the circumstances in which Welsh Ministers may give a formal warning notice to a maintained school. A warning notice is generally the start of the intervention process by the Welsh Ministers in a school, and may lead to the Welsh Ministers' powers of intervention being exercised.

22. The Welsh Ministers may issue a warning notice to the governing body of a school where one or more of Grounds 1 to 6 (set out in section 2) exist, but the local authority has not given a warning notice or has done so in terms the Welsh Minister think are inadequate. The warning notice will explain to the governing body the reasons why it is being given and the action that the governing body should take.

Section 11 – Power of Welsh Ministers to intervene

23. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 12 to 17.

24. Where the Welsh Ministers are satisfied that one or more of Grounds 1 to 6 exist, and they have complied with the warning notice procedure set out in section 10, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of Grounds 1 to 6 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

25. In addition the Welsh Ministers may exercise their powers of intervention if they are satisfied that Grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the Welsh Ministers do not have to comply with the warning notice procedure.

Section 12 – Power to require governing body to secure advice or collaborate

26. This section provides a mirror power to that of the local authority contained in section 5 (*power to require governing body to secure advice or collaborate*).

Section 13 – Power of Welsh Ministers to appoint additional governors

27. This section provides a mirror power to that of the local authority contained in section 6 (*power to appoint additional governors*).

Section 14 – Power of Welsh Ministers to constitute governing body of interim executive members

28. This section provides a mirror power to that of the local authority contained in section 7 (*power of local authority to constitute governing body of interim executive members*).

Section 15 – Power of Welsh Ministers to direct federation of schools

29. This section replaces the intervention power in section 18B of the 1998 Act and provides the Welsh Ministers with the power to issue directions relating to the federation of schools. A federation of schools is the grouping of two or more schools under a single governing body.

Section 16 – Power of Welsh Ministers to direct closure of school

30. This section replaces the intervention power in section 19 of the 1998 Act and provides the Welsh Ministers with the power to direct the closure of a school if it has the power to intervene on the basis of Ground 8 (school requiring special measures). Where the Welsh Ministers direct the closure of a school under this section there is no need for a local authority to make proposals to discontinue the school under Part 3.

Section 17 – General power to give directions and take steps

31. This section provides a mirror power to that of the local authority in section 9 (*general power to give directions and take steps*).

Sections 18, 19 and 20 and Schedule 1 – Supplementary

32. Section 18 introduces Schedule 1 which makes further provision in relation to interim executive boards (constituted following a direction under section 7 or 13). It deals with the transition from a normally constituted body to one consisting of interim executive members, and also the transition from a governing body consisting of interim executive members back to a normally constituted governing body. During the period in which the interim executive members are in post they must discharge the functions of the normally constituted governing body members. This means they are subject to the same law as normally constituted governing body members. However, they are not subject to the law that applies in relation to constitution and procedure of a governing body in regulations made under section 19(2) or (3) of the Education Act 2002 (paragraph 13). However, regulations made under certain paragraphs of section 19 of the 2002 Act may be applied to the board. For example, where regulations made partly under section 19(2) or (3) made provision in relation to school staffing issues such provisions could be applied to the board.

33. Section 19 provides that a head teacher or governing body of a school must comply with a direction given to them by a local authority or the Welsh Ministers under this Chapter. A direction must be in writing and may be enforced by a mandatory order of a court.

34. Section 20 provides a power for the Welsh Ministers to issue guidance to local authorities in relation to the exercise of its functions under Chapter 1 of Part 2 of this Bill. Accordingly, a local authority must have regard to such guidance.

Chapter 2 - Intervention in Local Authorities

35. This Chapter sets out the circumstances in which the Welsh Ministers can intervene in the way a local authority is exercising its education functions (which are those functions set out in Schedule 36A to the Education Act 1996)

Section 21 – Grounds for intervention

36. This section sets out the grounds for intervention that must exist for the Welsh Ministers to intervene in a local authority. These grounds replace the grounds for intervention in local authorities set out in sections 496 to 497A of the Education Act

1996 for Wales. If one or more these grounds exist, the Welsh Ministers will be able to begin the process for intervention.

37. Sections 496 to 497A of the Education Act 1996 will now apply only to local authorities in England.

Section 22 – Warning notice

38. This section provides that if one or more of the three grounds set out in section 21 exist, the Welsh Ministers may issue a warning notice to the local authority and specifies what information a warning notice must contain. The warning notice must, among other things, explain why the Welsh Ministers consider the grounds for intervention exist and what the local authority must do to deal with them. A warning notice is generally the start of the intervention process by the Welsh Ministers in a local authority, and may lead to the Welsh Ministers' powers of intervention being exercised.

Section 23 – Power of Welsh Ministers to intervene

39. This section sets out the circumstances where the powers to intervene in a local authority may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 24 to 28.

40. Where the Welsh Ministers are satisfied that one or more of Grounds 1 to 3 exist, and they have complied with the warning notice procedure set out in section 22, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of Grounds 1 to 3 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, or that the local authority is unlikely to be able to comply or secure compliance with a warning notice, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

Section 24 – Power to require local authority to obtain advisory services

41. This section replaces the intervention power in section 63 of the Education Act 2002 and provides a power for the Welsh Ministers to require the local authority to obtain advisory services from a third party.

Section 25 – Power to require performance of functions by other persons on behalf of authority

42. This section provides a power for Welsh Ministers to require a local authority to use the services of a third party to carry out its functions.

Section 26 – Power to require performance of functions by Welsh Ministers or nominee

43. This section allows the Welsh Ministers to require that a local authority's functions are carried out by the Welsh Ministers or by a person nominated by the Welsh Ministers.

Section 27 – Power to direct exercise of other education functions

44. This section enables the Welsh Ministers, when issuing directions under sections 25 or 26, to include directions that relate to any of the local authority's education functions, and not just those functions to which the powers to intervene relate.

Section 28 – General power to give directions and take steps

45. Where the power to intervene exists this section provides a general power to give directions to a local authority and take steps in relation to it. The taking of steps enables Welsh Ministers to do other things they think might help to deal with the grounds for intervention other than making a direction.

Section 29 – Directions

46. This section provides that a local authority must comply with a direction. A direction must be in writing and may be enforced by a mandatory order of a court.

Section 30 – Duty to co-operate

47. This section, which requires local authorities and governing bodies to assist with the action required to comply with directions, replaces section 497AA of the Education Act 1996 (*power to secure proper performance: duty of authority where directions contemplated*) with some amendments.

Section 31 – Powers of entry and inspection

48. This section, which sets out rights of access in connection with the carrying out of directions, replaces section 497B of the Education Act 1996 (*power to secure proper performance: further provisions*) with some amendments.

Chapter 3 – School Improvement Guidance

49. This Chapter provides for the Welsh Ministers to issue guidance to head teachers, governing bodies and local authorities about how to exercise their functions so as to improve standards of education.

Section 32 - Meaning of “school authority”

50. This section defines the term “school authority” to mean a local authority, governing body or head teacher of a maintained school in Wales. These school authorities are best placed to improve standards of education in schools.

Section 33 - Power to issue school improvement guidance

51. This section provides a power for the Welsh Ministers to issue guidance to school authorities setting out how they are to improve the standards of education in schools.

Section 34 - Consultation and National Assembly for Wales procedures

52. This section sets out the procedure that the Welsh Ministers must follow before issuing school improvement guidance. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the guidance before the National Assembly for Wales.

Section 35 - Duty to follow school improvement guidance

53. This section places a duty on school authorities to comply with the guidance issued under section 33.

54. This section does allow for school authorities to depart from that guidance in certain circumstances in order to provide for a degree of flexibility and innovation. Where a school authority wishes to depart from the guidance it must issue a policy statement detailing its alternative policy for exercising the education functions concerned. It must then follow that alternative policy. If there is a partial departure from the guidance, school authorities will have to adhere to both the policy statement and (in so far as the policy statement does not deal with a matter) the guidance.

55. In addition the duty to follow the school improvement guidance or a policy statement will not apply if to do so would lead to irrational results.

Section 36 - Policy statements: requirements and ancillary powers

56. This section makes further provision in relation to the policy statements that a local authority or governing body must issue before they are allowed to depart from the school improvement guidance.

Section 37 - Directions

57. Where the Welsh Minister consider that the alternative course of action set out in a school authority's policy statement is not likely to improve educational standards they may issue a direction to the school authority requiring it to comply with the guidance. A direction must be issued in writing and may be enforced by a mandatory order.

Part 3: School Organisation

58. Part 3 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 10 pupils.

Chapter 1: The School Organisation Code

Section 38 - School Organisation Code

59. This section creates a requirement for the Welsh Ministers to issue and publish a code (or codes) on school organisation (“the Code”) with which the persons listed at *subsection 2* must act in accordance if the Code requires them to do so. The Code may also include guidelines setting out aims, objectives and other matters to which the named persons must have regard.

Section 39 - Making and approval of School Organisation Code

60. This section sets out the procedure that the Welsh Ministers must follow before issuing the Code. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the Code before the National Assembly for Wales.

Chapter 2: School Organisation Proposals

Section 40 - Restriction on establishment, alteration and discontinuance of maintained schools

61. This section requires that the opening or closing of a maintained school, or the making of a significant alteration (known as a ‘regulated alteration’) be done in accordance with the processes set out in this Part – except where the Welsh Ministers are using their power of intervention to direct that a school be closed under section 16. The regulated alterations are set out in Schedule 2. Subsection 2 of section 40 prohibits the establishment of a new foundation or foundation special school in Wales. Subsection 5 prohibits any alteration to a maintained school that changes its religious character or causes it to acquire or lose a religious character.

62. Similar provision was made in sections 28(11) and 33 of the 1998 Act.

Sections 41 – 44 and Schedule 2: Proposals that may be made in respect of schools in Wales

63. These sections give local authorities the power to make proposals to:

Establish a community, voluntary, maintained nursery, or community special school;

Discontinue a community, maintained nursery, voluntary, foundation, or community special school;

Make a regulated alteration to a community, maintained nursery, or community special school;

Make a regulated alteration to increase or reduce capacity at a voluntary or foundation school that does not have a religious character;

With the consent of the Welsh Ministers, make a regulated alteration to open or close a school’s sixth form at a voluntary or foundation school.

64. In addition, any person may make a proposal to establish a voluntary school and the governing body of a foundation, voluntary or foundation special school may

make proposals to make a regulated alteration to the school or to discontinue the school.

65. Schedule 2 sets out in detail the regulated alterations that may be made to a school. Amongst other alterations it allows for:

Alterations to the capacity of the school (paragraphs 10 to 14). In working out whether there is an alteration to the capacity of the school, previous alterations are taken into account so that changes to the capacity cannot be done incrementally without the need to make proposals;

An increase or decrease in the age range of the school (paragraph 5). An increase in the upper age range of a school does not permit the addition of a school sixth form. Separate provision in the Schedule (at paragraph 6) allows for a sixth form to be added (or removed) from a school;

Alterations to the language medium of the school (paragraphs 7 and 8). These have been updated from the Education (School Organisation Proposals) (Wales) Regulations 1999 to reflect the introduction of the foundation phase and teaching methodologies in primary schools; these no longer refer to subjects but instead to percentages of time spent teaching pupils.

66. Paragraph 26 of the Schedule provides the Welsh Ministers with a power to add, change or remove a regulated alteration by Order.

67. These provisions are based on sections 28, 29, 31 of the 1998 Act and regulations made under these powers.

Section 45 – 47 and Schedule 5: Changing a school’s category

68. Schools maintained by local authorities (other than maintained nursery schools) are divided into the different categories set out in section 20 of the 1998 Act. Sections 45 to 47 (based on section 35 of, and Schedule 7 to the 1998 Act) detail who may make proposals to change a school’s category; the grid below summarises this (VA means voluntary aided, VC means voluntary controlled, GB means governing body and LA means local authority).

| Category of school | Can become | Proposer |
|--------------------|---------------------|----------|
| Community school | VA or VC | GB |
| VA school | Community or VC | GB |
| VC | Community or VA | GB |
| Foundation | Community, VA or VC | GB |

69. No school may change category to become a foundation or foundation special school. No foundation or voluntary school with a religious character may change category to become a community school.

70. In order to become a VA school a GB must satisfy the Welsh Ministers that they are able to satisfy those funding obligations for a period of at least five years after the change of category takes place (section 47).

71. A change of category does not authorise a change in a school's religious character, or authorise it to establish, join or leave a foundation body (as defined in section 21 of the 1998 Act).

72. If a school is to become a community or community special school, it must enter into the transfer agreements detailed in Schedule 5. This Schedule provides for and sets out the process by which governing bodies and local authorities must implement the proposals to change schools and makes similar provision to that found in the Change of Category of Maintained Schools (Wales) Regulations 2001. It sets out, amongst other things, details on how staff and land are to be transferred. The Welsh Ministers are provided with a regulation making power in connection with how changing category affects the government of the school.

Section 48 - Publication and consultation

73. This section requires that school organisation proposals are consulted upon and published. The Code will set out requirements for the consultation and how and when proposals are to be published. Proposers must publish a report on the consultation. The proposers must send copies of the published proposals to the Welsh Ministers and the maintaining local authority. The requirement to consult does not however apply in the case of proposals to discontinue schools with fewer than 10 registered pupils on the third Tuesday of the preceding January (as defined in section 57). This date is the date upon which the Annual Schools Census currently takes place (and the number of pupils at a school on that date will therefore be known).

Section 49- Objections

74. This section enables any person to object in writing to a proposal within 28 days of the publication date ("the objection period"), and requires proposers to publish a summary of the objections together with their responses within 28 days of the end of the objection period.

Sections 50 - 54 and Schedule 3: Categories of objectors and approval

75. Any person may object to a proposal, but whether a person falls within one of the three categories of objectors (set out in section 50) will dictate who determines the proposal as detailed in the following table

| <u>If there is/are –</u> | <u>Who determines the proposal</u> |
|--|------------------------------------|
| At least one category 1 objector or the proposal relates to sixth form education | Welsh Ministers (section 52) |
| No category 1 objectors, at least one | Local Determination Panel (section |

| | |
|---|---------------------------|
| category 2 objector and/or at least ten category 3 objectors | 53) |
| No category 1 or 2 objectors , up to nine category 3 objectors, and / or objectors that don't fall into any of the categories, or there are no objections | The proposer (section 55) |

76. Objections in relation to the closure of a school with fewer than 10 pupils are determined by the proposer regardless of category (section 52(9)).

77. Provision is also made for the provision of documents to the Welsh Ministers or local determination panel and how to deal with related proposals (section 54).

78. Section 53 and Schedule 3 provides a framework as to the membership, procedure and miscellaneous matters relating to a local determination panel. The local determination panel is to consist of 5 members who are to be treated as members of the appointing authority for the purposes of Part 8 of the Local Government (Wales) Measure 2011. This means that local determination panel members will be able to be paid allowances and expenses in accordance with the 2011 Measure.

79. The local determination panel will also be a body within the jurisdiction of the Public Services Ombudsman for Wales. This means that a complaint can be made to the Ombudsman about the local determination panel in the same way as a complaint could be made about an independent appeal panel for school admissions or exclusion.

Section 55 and Schedules 4 and 5 - Implementation

80. This section requires that proposals which have been approved, or the proposer has determined that they should be implemented, must be implemented in the form in which they were approved or determined, and in accordance with Schedule 5 for change of category proposals, or in accordance with Schedule 4 for every other type of proposal.

81. Schedule 4 provides further detail about the implementation of statutory proposal including responsibilities for implementing different types of proposals, and the provision of premises and assistance. Schedule 5 provides further detail about the implementation of change of category proposals, including the transfer of staff and land.

82. The proposer may delay determination for up to three years, or determine not to implement a proposal at all if it is satisfied that implementation would be unreasonably difficult or that circumstances have so altered that implementation would be inappropriate. The proposer may also determine to bring forward implementation by up to 13 weeks.

83. In making such determinations, the proposer must notify the relevant governing body and local authority (where these are not the proposer). Where

proposals have received the approval of the Welsh Ministers or the local determination panel, the proposer must seek the agreement of the Welsh Ministers before making any determination to delay or abandon or bring forward implementation.

84. Section 55 and Schedule 4 replace, with amendments, Schedule 6 to the 1998 Act. Schedule 5 is based on the Change of Category of Maintained Schools Regulations 2001.

Chapter 3: Rationalisation of School Places

Sections 57 - 63: Rationalisation of Schools Places – powers and procedures

85. These sections set out powers of the Welsh Ministers to direct local authorities and governing bodies to exercise their powers under Chapter 2 of this Part to make proposals to increase or decrease the number of school places in their area so as to address insufficient or excessive provision - i.e. “rationalise school places”.

86. If the local authority fails to rationalise school places, the Welsh Ministers are provided with powers to make their own proposals to rationalise places (and these provisions also set out the procedure to be followed in the event that such proposals are published).

87. These sections largely re-enact Schedule 7 to the 1998 Act.

Chapter 4: Regional Provision for Special Educational Needs

Sections 64 – 70: Regional Provision of Special Educational Needs, powers and procedures

88. These sections 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. Regional provision may involve the provision of education at a school maintained by one local authority for children from other authorities, or the provision of goods and services by one local authority to other authorities or schools.

89. Section 71 provides for the Welsh Ministers to make their own proposals in respect of regional provision (including the procedure to be followed in the event that such proposals are published).

90. These sections are based on provisions found at sections 191 to 193 of the Education Act 2002.

Chapter 5: Proposals for Restructuring Sixth Form Education

Sections 71 – 77

91. These sections, based on section 113A of and Schedule 7A to the Learning and Skills Act 2000, provide the Welsh Ministers with the power to make proposals for the establishment of new community, or community special schools to provide sixth form education only; the addition or removal of sixth form education from any existing maintained schools; the discontinuation of any existing sixth form school; and the procedures to be followed if the Welsh Ministers publish proposals for restructuring sixth forms.

92. Section 77 makes consequential amendments in respect of inspection reports on sixth form education. Section 113 of, and Schedule 7, to the Learning and Skills Act 2000 provided the Welsh Ministers with powers to publish proposals to discontinue a school that only offered sixth form education or to remove a sixth form from a school. These powers were triggered by an adverse inspection report by Her Majesty's Chief Inspector of Education and Training in Wales. As section 72 provides a free-standing power for the Welsh Ministers to bring forward proposals for the alteration or removal of sixth forms, there is no longer a need for the triggers in Schedule 7 to the Learning and Skills Act 2000. However the requirement to report separately on the adequacy of the education of a school's sixth form as part of a general school or an area inspection is still relevant, and the Education Act 2005 is amended to retain this requirement. These sections are based on provision found in paragraphs 1 to 6 of Schedule 7 to the Learning and Skills Act 2000.

Chapter 6: Miscellaneous and Supplemental

Section 78 - Federated schools

93. This section allows proposals to establish a new school to include the establishment of the school as a federated school. A federated school is a school which is part of a group of schools with a single governing body.

Section 79 - Prohibition on local authorities establishing schools in England

94. This section prevents the establishment of a school in England which would be maintained by a local authority in Wales. This section re-enacts section 69 of the Education Act 2005.

Section 80 - Notice by governing body to discontinue a foundation or voluntary school

95. This section, which re-enacts and updates section 30 of the 1998 Act, enables the governing body of a foundation or voluntary school, following the procedure required by this section, to discontinue their school by serving at least two years' notice on the Welsh Ministers and local authority.

Section 81 - Direction requiring the discontinuance of community special school

96. This section which re-enacts section 32 of the 1998 Act allows the Welsh Ministers to direct a local authority to discontinue (without the need for proposals under section 44) a community or foundation special school if they consider it

expedient to do so in the interests of health, safety or welfare of pupils. Before doing so the Welsh Ministers are required to consult specified persons. The Welsh Ministers must also provide notice to the relevant governing body and head teacher.

Part 4: Welsh in education strategic plans

97. Part 4 makes it a statutory requirement for local authorities to have Welsh in education strategic plans (WESPs) in place. This replaces a voluntary scheme.

Section 84 – Preparation of Welsh in education strategic plans

98. This section sets out what a WESP should contain. This section places a duty on all local authorities to prepare a plan, keep it under review and revise it if necessary. This section also sets out with whom a local authority is required to consult in preparing or revising its WESP.

Section 85 - Approval, publication and implementation of Welsh in education strategic plans

99. Each local authority will be required to submit its WESP to Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a WESP (imposing its own plan in its place). Subsection (6) places a duty on a local authority to take all reasonable steps to implement its approved WESP.

Section 86 - Assessing demand for Welsh medium education

100. This section provides a power for the Welsh Ministers to make regulations which require local authorities to assess parental demand for Welsh-medium provision in certain circumstances. Such regulations may make provision about when and how a local authority should undertake an assessment of demand.

Section 87 - Regulations and guidance

101. This section gives Welsh Ministers powers to make regulations which will make further provisions on matters such as the form and content of a WESP, its timing and duration, keeping the WESP under review, consultation and submission of the WESP for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

102. This section also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions under Part 4.

Part 5: Miscellaneous Schools Functions

Section 88 – Duty to provide free breakfasts for pupils in primary schools

103. This section requires a local authority to provide breakfasts free of charge on each school day 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 and 90 days have passed since the authority received the request.

104. The local authority's duty to provide breakfasts 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.

105. The section sets out the requirements that must be met by a local authority when making breakfast arrangements. It also provides the Welsh Ministers with a power to issue guidance to which local authorities and governing bodies must have regard.

Section 89 – Transitional Provisions

106. Subsection (1) applies where a local authority that maintains a primary school, or its governing body, is providing breakfasts to pupils at the time the local authority's duty under section 88 comes into force. In such circumstances, the local authority's duty under section 88 will apply in relation to the school as if the requirements in section 89(1) have been met.

107. Subsections (2) and (3) apply if, before the local authority's duty under section 89 comes into force, the governing body of a maintained primary school makes a written request to the local authority to provide breakfasts at the school and neither the local authority or the governing body of the school has arranged for breakfasts to be provided to pupils at the school. In such circumstances the request made by a governing body is to be treated as though it was made on the day that the local authority's duty under section 88 came into force.

Section 91 – Amendment to power to charge for school meals etc

108. This section amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of the 1996 Act.

109. Subsections (2)(b) and (3)(b) repeal the requirement that any charge made for the provision of milk, meals and other refreshments in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will give local authorities and governing bodies the option to charge different prices for the same quantity of the same item.

110. Flexible charging will for example, enable local authorities and governing bodies to charge less for school meals provided to children of families on low incomes not eligible for free school meals in order to encourage them to take school meals. Use of flexible charging is optional and subject to local circumstances. This change will not affect the provision of free school meals (and free milk) to eligible pupils.

111. The effect of the amendments made by subsections 2(a) and 3(a) is that local authorities and governing bodies of maintained schools are prevented from charging

more than the cost of providing milk, meals or other refreshments to pupils. Currently, there is no cap on how much a pupil can be charged. This will not affect the provision of free school meals (and free milk) to eligible pupils

Section 92 – Independent counselling services for school pupils and other children

112. This section requires a local authority to make reasonable provision for an independent counselling service in respect of health, emotional and social needs for specified categories of persons.

113. The section sets out requirements that must be met by a local authority when making counselling arrangements.

114. It also provides the Welsh Ministers with a power to make regulations requiring local authorities to provide counselling services at locations specified in the regulations.

Section 93 – Information about independent counselling services

115. This section enables the Welsh Ministers to obtain information from a local authority about its independent counselling service. Subsections (1) and (2) require a local authority to comply with a direction of the Welsh Ministers by providing and compiling information about the counselling service. Subsection (3) prevents the disclosure of an individual's identity and subsection (4) sets out the position where the person providing the counselling service is not the local authority.

Section 94 – Duty of governing body of maintained schools to hold meetings following petition by parents

116. This section provides out that a governing body must hold a meeting if the following four conditions are met:-

1. it receives a petition requesting a meeting from whichever is the lower of:
 - the parents of 10% of registered pupils, or;
 - the parents of 30 registered pupils.
2. the meeting is for the purpose of discussing a matter relating to the school;
3. that there will be no more than three such meetings in a school year; and
4. that there are enough school days left in the school year in which to hold the meeting.

117. Upon receipt of a request the governing body must inform parents of registered pupils at the school of the date and purpose of the meeting and must hold the meeting within 25 days (as calculated in accordance with subsection (9) and (10)) of receipt of the petition.

118. The governing body must have regard to guidance issued by the Welsh Ministers on how to discharge their duty in this section.

Section 95 – Repeal of duty to hold annual parents' meeting

119. As a consequence of the provision on parents' meetings in section 95, this section repeals section 33 of the Education Act 2002 which required governing bodies of maintained schools to hold an annual parents' meeting (and consequently the Annual Parents' Meeting (Exemption) (Wales) Regulations 2005 made under that power will lapse).

PART 6

General

Section 97 – Orders and Regulations

120. This section sets out the regulations and orders under the Bill to be made by statutory instrument and sets out the National Assembly for Wales procedure in respect of these instruments.

Section 98 – General interpretation and index of defined expressions

121. Section 98 defines terms used in the Bill and also contains an index of terms that are defined for the purpose of some provisions of the Bill. Subsection (1) provides that the Bill is to be read as one with the Education Act 1996. This means that general provisions and general definitions in that Act will also apply to this Bill. For example the definition of the "education functions" of a local authority in the Education Act 1996 refers to the functions set out in Schedule 36A to that Act. That term, when used in this Bill, has the same meaning. If there is a difference in meaning between a term used in this Bill and in the Education Act 1996, the meaning given for the purpose of the Bill applies.

Section 99 and Schedule 6 – Minor and consequential amendments

122. Section 99 gives effect to Schedule 6, which contains minor and consequential amendments as a result of the provisions in Parts 2, 3 and 5.

123. Amongst other things it amends the Diocesan Board of Education Measure 1991. This is a Church of England Measure. Whilst almost all of Wales is within the boundaries of the Church in Wales, there are some parishes in Powys that form part of dioceses within the Church of England.

124. Amendments to the Church of England Measure could have been made by this Act, the Secretary of State for Wales under section 150 of the Government of Wales Act 2006, by a UK Act of Parliament or by a Church of England Measure. The Welsh Government sought the views of the Church of England on this matter and obtained the agreement of the Secretary General to the Archbishops' Council to the amendments to be made by this Act.

Section 100 – Commencement

125. This section provides for sections 1 (overview), 100 (commencement) and 102 (short title and inclusion as one of the Education Acts) to come into force the day after Royal Assent is received.

126. Chapter 3 (school improvement guidance) of Part 2, section 91 (amendment to power to charge for school meals etc) and paragraphs 26, 29(1), 30 and 31 of Part 3 of Schedule 6 (amendments consequential on section 91) (and section 99 in relation to those paragraphs), and sections 95 and 96 and paragraph 27 of Part 3 of Schedule 6 (amendment consequential on section 95 and 96) come into force 2 months after Royal Assent is received.

127. The remainder of the Bill will come into force in accordance with commencement orders made by the Welsh Ministers.

Section 101 – Short title and inclusion as one of the Education Acts

128. This section provides that the short title will be the School Standards and Organisation (Wales) Act 2013. It also provides that the Bill is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This means that references in any legislation to “the Education Acts” will include this Bill.