

National Assembly for Wales
Children and Young People Committee

Education (Wales) Bill

November 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Children and Young People Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2089 8242
Fax: 029 2089 8021
Email: CYPCommittee@wales.gov.uk

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Children and Young People Committee

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

Current Committee membership



Ann Jones (Chair)

Welsh Labour
Vale of Clwyd



Angela Burns

Welsh Conservatives
Carmarthen West and South
Pembrokeshire



Keith Davies

Welsh Labour
Llanelli



Suzy Davies

Welsh Conservatives
South Wales West



Rebecca Evans

Welsh Labour
Mid and West Wales



Bethan Jenkins

Plaid Cymru
South Wales West



Lynne Neagle

Welsh Labour
Torfaen



David Rees

Welsh Labour
Aberavon



Aled Roberts

Welsh Liberal Democrats
North Wales



Simon Thomas

Plaid Cymru
Mid and West Wales

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1. Introduction

1. On 1 July 2013, the Minister for Education and Skills, Huw Lewis AM (“the Minister”), introduced the Education (Wales) Bill¹ (“the Bill”) and made a statement² in plenary³ the following day.

2. At its meeting on 18 June 2013, the National Assembly’s Business Committee agreed to refer the Bill to the Children and Young People Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 22 November 2013.

Terms of scrutiny

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

To consider:

- The general principles of the Education (Wales) Bill and the need for legislation in the following areas-

 - Education Workforce Council - Registration and regulation of teachers and the wider workforce;

 - Reform of the registration and approval of independent schools in respect of special educational needs;

 - Post-16 assessment of educational and training needs and specialist Further Education;

 - School term dates;

 - The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales under section 19 of the Education Act 2005;

¹ Education (Wales) Bill, available at: <http://www.assemblywales.org/pri-ld9382-e.pdf>

² ROP, 2 July 2013, available at: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=248525&ds=7/2013>

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

³ A full meeting of the National Assembly for Wales

any potential barriers to the implementation of these provisions and whether the Bill takes account of them;

the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the 'Regulatory Impact Assessment', which estimates the costs and benefits of implementation of the Bill), and

the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

The Committee's approach

4. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses are attached at page 54.

5. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions are attached at page 56. Full transcripts of these sessions are available on the Assembly's website at: <http://www.assemblywales.org>.

6. The following report represents the conclusions and recommendations the Committee has reached based on the evidence received during the course of their work.

7. This report does not comment on all sections of the Bill. Where no comment is offered on a particular section, it can be assumed that the Committee is content with the provisions as drafted within the Bill.

8. The Committee would like to thank all those who have contributed.

2. Conclusions and recommendations

Recommendation 1. The Committee notes the evidence received and agrees with the principles of the Bill and the need for legislation, with the exception of the SEN provisions. The Committee believes there would be advantages in including all SEN reforms within a single piece of legislation, providing this can be done in a timely manner, and recommends that the Minister consider whether this Bill is the appropriate vehicle for these provisions. (Page 11)

Recommendation 2. The Committee recommends that the Minister consider the definition of Youth Workers. The Committee recommends that the Minister should bring forward draft regulations for the Committee's consideration prior to the regulations being tabled. (Page 15)

Recommendation 3. The Committee recommends that the Bill is amended to ensure teachers and staff at independent schools are included in the requirements to register. (Page 15)

Recommendation 4. The Committee recommends the Minister review the evidence received by the Committee and re-consider the requirement under section 7 of the Bill for the Council to obtain the consent of the Welsh Ministers before advising relevant persons. (Page 20)

Recommendation 5. The Committee also recommends the Minister reviews whether the provisions for appointing members to the Council, its Chief Officer, and drawing up the first Code of Conduct and Practice will result in the new body being as independent as the existing GTCW. (Page 20)

Recommendation 6. The Committee recommends the Minister gives further consideration to the CPD provisions in the Bill, particularly in the context of the evidence on the imbalance of the two stated aims of the Bill. The Minister should share relevant draft regulations with the Committee at an early stage. (Page 23)

Recommendation 7. The Committee recommends that the Council should set its own fees but that the Welsh Ministers should issue guidance, based on principles of fairness and equality, on the setting of registration fees. (Page 26)

Recommendation 8. The Committee recommends that the Minister clarifies the level of funding that will be in place for the Council's roles in CPD and the promotion of careers and how these will be delivered in practice. (Page 26)

Recommendation 9. The Committee is not against simplifying the legislative process for admitting learners with SEN to independent schools and reducing complexity but recommends the Minister reconsiders the proposal to abolish the current case by case approval, including consideration of whether sufficient safeguards will be in place. (Page 31)

Recommendation 10. The Committee agrees that the change in procedure for assessing and supporting education for learners post 16 risks creating a conflict of interest for local authorities. The Committee notes that local authorities are facing a continued period of austerity, and recommends that reassurance and guidance be issued by the Minister to ensure that funding decisions are made only on the basis of educational need and not based on budget pressures. (Page 39)

Recommendation 11. The Committee agrees that the distinction between the statutory duty and the discretionary power does create a risk that learners who require support may be missed, and recommends the Minister review this section. (Page 39)

Recommendation 12. The Committee recommends that the timescale set out in the Bill for the length of time a learner must wait before submitting an appeal against non-completion of assessment, and a deadline for decisions to be made are reconsidered. (Page 39)

Recommendation 13. The Committee recommends the Minister review the distinction between the statutory duty and discretionary power in Section 44 and its reliance on whether a learner has a statement of SEN. The Committee firmly believes this section allows for unequal outcomes for learners due to the variation between local authorities and poses a risk for learners needing support. (Page 40)

3. General principles and the need for legislation

The National Assembly's legislative competence to make the Bill

9. The Explanatory Memorandum⁴ ("EM") states:

"The National Assembly for Wales has the legislative competence to make provision in relation to education in Wales by virtue of section 108 of, and Part 1 (Subject 5: Education and training) of Schedule 7 to, the Government of Wales Act 2006."

10. The Presiding Officer issued a statement on 1st July 2013,⁵ which stated, in her opinion; the Bill would be within the legislative competence of the National Assembly for Wales.

General principles

11. The Bill seeks to:⁶

- Enhance workforce planning, training and development. Introduce a new, more robust registration system that will bring greater coherence and recognise the contribution of the whole education workforce to the education of all learners in Wales.
- Bring greater coherence by changing the way that school term dates are set so that they may be harmonised across all maintained schools in Wales.
- Support provision for learners with special educational needs by reforming the way independent schools are registered and approval to provide education for learners with 'Special Education Needs' ("SEN"). It will also provide for better transition for SEN learners from school into further education by placing responsibility for assessing the needs of, and securing specialist post-16 education for learners with learning difficulties and/or disabilities with the local authority.
- Change the way that school term dates are set so that they can be harmonised across all maintained schools in Wales.
- Simplify the process of the appointment of HM Chief Inspector and HM Inspectors of Education and Training in Wales (Estyn.)

⁴ Explanatory Memorandum, paragraph 3

⁵ <http://www.assemblywales.org/pri-ld9382-pos-e.pdf>

⁶ Explanatory Memorandum, paragraph 6-8

12. Whilst the committee, are generally content to support the first two of the principles outlined, the issues around the inclusion of provisions relating to SEN is more of a concern for the Committee and evidence has included reservations over the coherence and implications of separating the SEN proposals from wider reforms in this area.

Minister's evidence

13. When questioned about the inclusion of SEN provisions in this Bill the Minister said:

“It is timely... This is an opportunity to improve and simplify the current system, while bearing in mind, of course, that there is a wider agenda that needs to be addressed around SEN. There is no reason in my view to hold back on those provisions... In other words, why would we not? If we can deliver discrete and concrete improvements through this Bill, then this is a legislative vehicle that we should use.”⁷

14. When questioned further, the Minister continued:

“The alternative, really, would be to wait for 18 months or two years for, perhaps, a more elegant legislative vehicle to pull up and then we could jump aboard that one. However, there is the opportunity within the legislative timetable to deliver concrete improvement through these means. It is certainly not dependent on the outcome of the wider SEN agenda.”⁸

Our View

15. The Committee considered all the evidence, and is happy to support the principles of the Bill in relation to the education workforce and harmonisation of school term dates.

16. However, the Committee remains unconvinced by the inclusion of SEN provisions in this Bill. The Committee believes this Bill is an inappropriate piece of legislation to take forward such important provisions.

17. As the Minister has indicated his intention to bring forward a specific Bill relating to the wider SEN agenda the Committee believes serious consideration should be given to removing SEN provisions from this Bill and

⁷ ROP, paragraph 84, 24 October 2013

⁸ ROP, paragraph 87, 24 October 2013

including them in a separate Bill, which would provide a more holistic approach to the SEN issue.

18. The Committee believes removing SEN provisions from this Bill would overcome concerns regarding introducing these changes when there is variation in SEN policy and practice, given that the context is likely to change substantially in the next few years.

19. Furthermore, the Committee believes there are issues with the funding details provided for the SEN provisions in the Bill and removing the SEN provisions from this Bill would allow the Government time for further consideration of the funding issues.

The Committee notes the evidence received and agrees with the principles of the Bill and the need for legislation, with the exception of the SEN provisions. The Committee believes there would be advantages in including all SEN reforms within a single piece of legislation, providing this can be done in a timely manner, and recommends that the Minister consider whether this Bill is the appropriate vehicle for these provisions.

4. Education Workforce Council - Registration and regulation of teachers and the wider workforce

Registration

20. The Explanatory Memorandum states:

“A key feature of many professions is that they register with a professional body that sets and maintains professional standards ... This brings benefits of accountability, transparency and assurance of standards.”⁹

21. Currently, only qualified teachers, who work in a maintained school in Wales, must be registered with a professional body (currently the General Teaching Council Wales ‘GTCW’) in order to practice. The EM outlines that the obligation to register will be initially extended to:

- School learning support workers; and
- Further Education (“FE”) teachers and learning support workers.

22. There is an intention to extend the obligation to register in future to:

- Work based learning (“WBL”) tutors and support staff; and
- Youth workers.

23. In the EM, the Welsh Government sets out how the education workforce in Wales has changed significantly in the last ten years. It cites the collaboration between schools and post 16 providers to deliver wider options to learners and reforms such as the Foundation Phase and 14-19 Learning Pathways, which require practitioners including learning support staff to work together, as key factors.¹⁰

Evidence from Witnesses

24. Evidence received by the Committee showed a consensus that extending the requirement to register support workers and further education staff is appropriate given the changing nature of the education workforce.

25. However, there were mixed views on the future inclusion of youth workers.

⁹ Explanatory Memorandum, paragraph 17

¹⁰ Explanatory Memorandum, paragraph 12

26. The Welsh Local Government Association (“WLGA”) thought that including youth workers was ‘entirely appropriate’ given that youth work is moving ‘more towards supporting education and supporting school improvement’¹¹ whilst Estyn also supported this due to their ‘very important support role in education and training in its widest context and widest sense’.¹²

27. Undeb Cenedlaethol Athrawon Cymru (“UCAC”) had concerns about including youth workers due to the current variation in their role and because ‘they are not really part of the education workforce at the moment’.¹³ Including youth workers was also an issue highlighted in the focus groups held by the Outreach team with Wrexham Council’s Youth Service saying there is currently a ‘huge variation in what is classed as a youth worker’.¹⁴

28. UNISON commented that there would be difficulties in including youth workers into a registration that is ‘purely focused on education’ and that ‘formalising and pooling youth workers into education would probably nullify some of the better work they do in the community’.¹⁵

29. Evidence received identified the important challenge of adequately defining the categories which will register. Estyn said that ‘there is a lot of work that needs to be done in order to specify the categories’, pointing to comparing qualifications and the treatment of part-time visiting staff in further education as particular issues.¹⁶

30. The Association of Teachers and Lecturers (“ATL”) believed there needed to be ‘clear definitions of who is going to be registered’¹⁷ and the Association of School and College Leaders (“ASCL”) warned that achieving consensus over definitions and job titles ‘is going to very difficult to achieve in certain parts of the sector’, with, for example ‘many job titles out there when you look at learning support’.¹⁸

31. However, the GTCW advocated the inclusion of broad, flexible definitions on the face of the Bill. The GTCW said the legislation would be

¹¹ ROP, paragraph 229, 26 September 2013

¹² ROP, paragraph 232, 2 October 2013

¹³ ROP, paragraph 97, 26 September 2013

¹⁴ Written evidence, EB 30

¹⁵ ROP, paragraph 18, 26 September 2013

¹⁶ ROP, paragraph 226, 2 October 2013

¹⁷ ROP, paragraph 9, 2 October 2013

¹⁸ ROP, paragraph 15, 2 October 2013

most effective if it was ‘enabling’ rather than ‘over-specific’ and recommended that the new Council had the flexibility to define these categories and specific roles in the future.¹⁹

32. The evidence strongly supported the registration of staff in independent schools. The NAHT said that the omission did not ‘make sense’,²⁰ the NASUWT thought that the private, in addition to the public, sector should be regulated,²¹ and the GTCW regarded it as ‘a serious loophole that this Bill has an opportunity to put right’.²²

33. The ATL summed it up as being needed

“so that someone who has perhaps been disciplined and dismissed and frankly struck off from the register and is no longer able to work in the maintained sector should then not be able to get a job in an independent school”.²³

Minister’s evidence

34. The Minister was questioned about the inclusion of further groups for registration, particularly youth workers. He confirmed the Bill does not currently include youth workers, but he said ‘it is my intention to require youth workers to register over time’, and continued:

“the sector varies quite considerably in terms of how you might define a youth worker, and that their contractual arrangements can be very variable as well. So, for all those reasons of complexity, it was decided to make secondary legislation to require youth workers to register. That will require further full consultation to inform the policy.”²⁴

35. The issue of staff in independent schools not being covered by the registration was raised in Plenary when the Bill was formally introduced on 2 July 2013. Acknowledging that a number of Members had made this point in

¹⁹ ROP, paragraph 139, 2 October 2013

²⁰ ROP, paragraph 22, 2 October 2013

²¹ ROP, paragraph 103, 26 September 2013

²² ROP, paragraph 142, 2 October 2013

²³ ROP, paragraph 21, 2 October 2013

²⁴ ROP, paragraph 8, 24 October 2013

response to his oral statement, the Minister remarked that he was ‘always willing to listen’ and that ‘it is something, perhaps, for me to ponder upon’.²⁵

36. However, when questioned on the issue by Members of the Committee the Minister said:

“I am satisfied that, by the very nature of independent schools as private autonomous businesses, in effect, they are in a very different situation. I am content that the safeguards that we already have around the quality of those establishments and around safeguarding will remain as they have been, and so there is nothing to be lost by this legislation in terms of the requirements that are put upon independent schools.”²⁶

Our view

37. The Committee is content with the extension of registration to other sectors of the education workforce, including the Ministers intention to include Youth Workers at a later stage.

38. However, Members accepted some of the concerns raised regarding definition of staff to be included. Members were particularly concerned that the definition of Youth Worker should be considered fully by the Minister.

39. The Committee is persuaded by the evidence in favour of including the registration of staff in independent schools. The Committee believe excluding staff in independent schools from this piece of legislation creates a serious safety loophole.

The Committee recommends that the Minister consider the definition of Youth Workers. The Committee recommends that the Minister should bring forward draft regulations for the Committee’s consideration prior to the regulations being tabled.

The Committee recommends that the Bill is amended to ensure teachers and staff at independent schools are included in the requirements to register.

²⁵ ROP, Plenary, 2 July 2013

²⁶ ROP, paragraph 11, 24 October 2013

Title of the new body

40. The Bill makes provision to change the name of the current registration body from the General Teaching Council Wales to the Education Workforce Council (“the Council”).

Evidence from Witnesses

41. The naming of the new body was an issue for a number of respondents to the Committee’s consultation, with the GTCW, in particular, making the case for the inclusion of ‘teaching’ or ‘profession’. For the GTCW, this is ‘not just a semantic thing’ as they did not believe that the proposed name, ‘Education Workforce Council’ conveyed the professionalism of either teachers or the new registrants. The GTCW stressed the importance of the word ‘teaching’ rather than ‘teachers’, as this reflects the emphasis on the professional activity of the regulated persons.²⁷

42. Similarly, the UCU thought that ‘professionalism’ should be reflected in the title. The Aspect Group of Prospect felt the proposed title was not very aspirational.

43. UCAC said they were ‘entirely comfortable with the name’.²⁸ The NUT said they would prefer to see the word teaching included but they did not have significant concerns over the name.²⁹

Minister’s evidence

44. When asked about the change of name for the new body the Minister was not convinced by the evidence, he said:

“I have heard a number of opinions raised in terms of the name, but I have not heard anything that persuades me that the title ‘Education Workforce Council’ is inadequate in any way. I think that it accurately reflects what we are about here, and, essentially, that is the wording on the tin—it does what it says on the tin.”³⁰

²⁷ ROP, paragraph 145, 2 October 2013

²⁸ ROP, paragraph 106, 26 September 2013

²⁹ ROP, paragraph 107, 26 September 2013

³⁰ ROP, paragraph 15, 24 October 2013

Our View

The Committee does not have a strong opinion on the title of the body, but the Committee does believe that the title of a registration body should reflect the content and purpose of the body.

Independence of the new body

45. The Bill gives a number of powers to Welsh Ministers, and the Council must comply with any general or specific Ministerial direction (other than in individual registration and disciplinary cases) and provisions made in Regulations. Welsh Ministers are able to:

- consent (or withhold consent) to the Council providing advice when requested;
- develop a code of conduct;
- appoint Council members;
- make provision about the registration fee (and who is to determine the amount);
- approve the pay scheme for council employees and appoint the Chief Officer of the Council.

Evidence from Witnesses

46. The GTCW presented a comprehensive critique of the arrangements as set out in the Bill and argued that the Bill will 'weaken professionalism' and 'fetter the independence' of the Council. The GTCW summarised in a table the current powers of the GTCW and those proposed for the new body. The GTCW highlight the following in respect of independence and Ministerial control:

- The new Council must comply with general or specific Ministerial direction;
- Permission is needed from the Minister for the Council to provide advice on specified teaching issues, which the GTCW described as 'preventing it using its insight and perspective independently';
- This advice can only be published with the consent of the Minister;
- The Welsh Government will produce the first code of professional conduct and practice;
- Welsh Ministers will appoint the membership of the Council;

- Welsh Ministers may specify who will appoint the Council’s Chief Officer and determine their terms;
- Welsh Ministers may specify who will appoint the Council’s Chief Officer and determine their terms and conditions;
- The Council’s pay scheme for its employees must be approved by Welsh Ministers.³¹

47. The GTCW described these ‘increased governance controls’ as the ‘hallmarks of a Welsh Government Sponsored Body rather than an independent professional self-regulatory body’. They identified the risk of insufficient professional ‘buy-in’ as a potential barrier to implementation.³²

48. These views were shared by the teaching unions. The ATL said that the proposed Council was ‘little more than a tool of government’ as it does things ‘to’ teachers and support staff rather than ‘for’ them and ‘by’ them.³³

49. The ASCL said that Welsh Ministers’ powers of appointment ‘sit uncomfortably with the notion of a professional body’; this was a recurring theme of the evidence.³⁴

50. UCAC believed that the Council should be trusted in its discretion when and to whom to give advice, arguing that the Bill suggests either a lack of trust or an inappropriate bid for control over an independent body.³⁵

51. The NAHT said that Ministerial appointment of members to the Council ‘ran the real risk of it being dismissed by the profession as a quango’³⁶ they warned the likely response of their members would be ‘if it looks like a quango and smells like a quango, we don’t want to join it’.³⁷ In evidence, the UCU, referred to the possible impact of a perceived lack of credibility of the Council:

‘The concerns we have are based on our experience with UCU and the Institute for Learning [IFL] in England. Members were compelled to join and pay a few or they would not be licensed to practise, but they felt that the IFL did not represent them as professionals. In the light of the debate around that, it collapsed and people decided that they

³¹ Written Evidence, EB 17

³² Written Evidence, EB 17

³³ Written Evidence, EB 12

³⁴ Written Evidence, EB 11

³⁵ Written Evidence, EB 05

³⁶ ROP, paragraph 29, 2 October 2013

³⁷ ROP, paragraph 30, 2 October 2013

were not going to pay to join, and therefore, that requirement has been withdrawn. We would not like to see a repeat of that here in Wales, but what we would like to see is a professional body set up for professionals by professionals to represent their professional interests and maintain the professionalism in education in Wales.’³⁸

52. The General Teaching Council for Scotland commented that there are differences in the level of independence proposed for the Welsh body compared to Scotland. They observed that many of the professional decisions central to the functioning of the new body will be taken by Ministers rather than the Council itself.³⁹

Minister’s evidence

53. When asked about the perceived dilution of the Council’s independence in Plenary on 2 July the Minister said:

“Constitutionally, the new education workforce council would have the same status as the current GTCW, so it would be independent of Government. There is no change. In essence, the Bill evolves the GTCW into another body, but does not interfere with its constitutional status and its relationship with the Welsh Government. Therefore, there is independence built in there.”⁴⁰

54. When questioned further on this issue in Committee the Minister said:

“The legal basis of the workforce council would essentially be the same as that for the GTCW. Legally speaking, this new body would have the same legal footprint as the current GTCW and, therefore, the same level of independence.”⁴¹

55. In evidence the Minister said

“Its [*the new body*] legal status, if you like, will not change as a body, and it would be independent of Government in the same way that the GTCW is independent... Essentially, however, the arm’s-length

³⁸ ROP, paragraph 25, 2 October 2013

³⁹ Written Evidence, EB 25

⁴⁰ ROP, Plenary, 2 July 2013

⁴¹ ROP, paragraph 43, 17 July 2013

relationship is completely analogous for the workforce council, as it would have been for the GTCW.”⁴²

Our View

56. Given the strength of the evidence on this issue, the Committee is not convinced that the new body will be independent of the Government.

The Committee recommends the Minister review the evidence received by the Committee and re-consider the requirement under section 7 of the Bill for the Council to obtain the consent of the Welsh Ministers before advising relevant persons.

The Committee also recommends the Minister reviews whether the provisions for appointing members to the Council, its Chief Officer, and drawing up the first Code of Conduct and Practice will result in the new body being as independent as the existing GTCW.

⁴² ROP, paragraph 48, 6 November 2013

5. Reform of the registration

Continuing professional development

57. The Explanatory Memorandum states one of the main functions for the Council will be to:

“Promote the careers of the education workforce...”⁴³

58. The Bill gives the Council an advisory role in the fields of ‘training, career development and performance management of registered persons’ (Section 7(2)(f)), which is subject to Ministerial permission for such advice to be issued.

59. The EM also says that the Council (with Welsh Ministers consent) can provide “advice relating to the wider education workforce; including issues such as ... continuing professional development (CPD)”.⁴⁴

Evidence from Witnesses

60. The Committee has received a significant amount of evidence arguing that there is an imbalance between the provisions within the Bill for the new Council to meet its two stated aims, which are:

- To contribute to improving the standards of teaching and the quality of learning in Wales
- To maintain and improve standards of professional conduct amongst teachers and persons who support teaching and learning in Wales

61. UCAC told the Committee that in the Bill:

“There is hardly any mention of increasing educational standards or CPD. I think that the imbalance in the Bill demonstrates that there will be an imbalance in the way that the Council itself will operate”.⁴⁵

62. The NUT agreed with this view, arguing that greater clarity is needed as to how these two objectives will be achieved.⁴⁶

⁴³ Explanatory Memorandum, paragraph 28.

⁴⁴ Explanatory Memorandum, paragraph 30.

⁴⁵ ROP, paragraph 129, 26 September 2013

⁴⁶ ROP, paragraph 135, 26 September 2013

63. However, NASUWT, believes the Council should not be responsible for CPD and that the ‘sole function of a registration body should be to regulate’.⁴⁷ NASUWT maintains that CPD and professional standards relate to teachers’ conditions of service and should be outside the remit of a regulatory body. They said the role of a regulatory body should be, where necessary, to make judgements in relation to standards, not to set the standards.⁴⁸ They argued that provision for CPD should rest with the Welsh Government, this is where it should be funded, arguing that CPD lying with the Council would ‘blur the boundaries’.⁴⁹

64. Estyn also believed responsibility for CPD should lie with the Welsh Government, they said:

“the function of supporting CPD should remain very close to the provision, that is, at the point where education provision is made [school and the regional consortia]...⁵⁰

I think that the Government needs to take ownership of the standards, because it has ownership of the policies that are interlinked with those standards. Therefore, I do not feel strongly that we should create further complexity in providing further functions to a separate body”⁵¹

65. The GTCW are concerned that, whilst ‘promotion of careers’ is specified in Section 8 of the Bill, there is no reference to the Council being able to undertake activities in the field of CPD. The GTCW regard the absence of such a clause on CPD as a ‘major omission’.⁵²

66. The GTCW believed the Bill should make the functions in respect of professional development explicit in the Bill itself. They highlight the danger that ‘unless it is on the face of the Bill, these things might not happen and other things could take precedence’.⁵³

⁴⁷ Written Evidence, EB 15

⁴⁸ Written Evidence, EB 15

⁴⁹ ROP, paragraph 134, 26 September 2013

⁵⁰ ROP, paragraph 240, 26 September 2013

⁵¹ ROP, paragraph 243, 26 September 2013

⁵² Written Evidence, EB 17

⁵³ Written evidence, EB 17

Minister's evidence

67. When questioned about the perceived imbalance between the two aims of the Council, the Minister said:

“I think that what is set out on the face of the Bill, in terms of the main functions, gets the balance about right.”⁵⁴

68. When questioned on the ability of the Council to make CPD provisions without direction from the Welsh Government, the Minister said:

“It is very important, to my mind, that the workforce council focuses on its job of work and that it is not necessarily going off and attempting, say, to duplicate a piece of work that Estyn might be tasked with doing. I think that there is a danger of that unless we make sure that there is rigour in terms of the job description of the workforce council.”⁵⁵

69. The Minister continued to say that ‘there are a number of regulation-making powers that would relate to professional development and standards that are tied up with the Bill.’⁵⁶

Our view

70. The Committee notes the evidence received regarding the CPD provisions within the Bill, and believes there is an imbalance in the Bill in terms of the role of the Council.

71. The Committee also believes more detail should be provided by the Minister on the specific role the Council will play in CPD.

The Committee recommends the Minister gives further consideration to the CPD provisions in the Bill, particularly in the context of the evidence on the imbalance of the two stated aims of the Bill. The Minister should share relevant draft regulations with the Committee at an early stage.

Registration fees and financial foundations of the new Council

72. Section 12 of the Bill allows the Welsh Ministers to make regulations about the fees that the Council may charge in connection with registration.

⁵⁴ ROP, paragraph 58, 24 October 2013

⁵⁵ ROP, paragraph 60, 24 October 2013

⁵⁶ ROP, paragraph 63, 24 October 2013

This includes both the amount of fees that may be charged and also the methods that may be used to collect those fees.⁵⁷

73. The EM states that further consultation will be undertaken before the level of fee is set.

74. Annex 2 of the EM contains the results of modelling work that the Welsh Government has undertaken on possible arrangements for such a variable-rate registration fee that is based on salary bands and levels of pension contributions. Under such an arrangement, those on the lowest incomes would pay the minimum or zero level fee with the rate increasing in accordance with the salary bands.

Evidence from witnesses

75. There were mixed views over whether individuals' contribution to the registration fee should be based on income, category or even a flat rate fee, although there was general welcoming and recognition of the Welsh Government's intention to consult further in 2014.

76. For the GTCW, this issue is crucial to the reconfiguration of the new Council and ensuring it has sufficient income to fulfil its functions; 'the fee is fundamental to an independent self-financing organisation'. The GTCW believes that the new Council must be 'trusted to set its own fees' as 'only this way will the Council be able to budget properly' and operate on a 'firm financial footing'.⁵⁸

77. The GTCW raised a number of concerns regarding the provisions around the registration fee, these included:

- The need to distinguish between the fee setting and the arrangements for subsidising the costs to registrants;
- The current fee level being used by the Welsh Government's modelling as the basis of the new fee.

78. The GTCW also said that that an increase in the fee would be unavoidable in 2015-16 and that it would be necessary to ensure the

⁵⁷ Currently, teachers in Wales pay the £45 registration fee to the GTCW and are subsequently reimbursed by their employers (local authorities) who receive funding from the Welsh Government to do this.

⁵⁸ Written Evidence, EB 17

financial viability of the new body. The GTCW warned such a failure to give the new body a stable financial footing and could expose it to criticism.⁵⁹

79. In oral evidence, the GTCW said the fee increase would probably need to be between £6 to £8 above the current level of £45.⁶⁰

80. Concerns were also raised regarding how the fee would be used. The general views of the teaching unions, particularly (NUT, NASUWT, UCAC) and the GTCW was that the promotion of careers should not be funded out of registration fees. They argue ‘the promotion of careers in registrable professions is a public responsibility and should be funded by the public purse’.⁶¹

81. The GTCW also raised concerns on the figures provided in the EM for the promotion of careers (The EM says that there will be a budget of £100,000 for the promotion of careers⁶²). The GTCW described this as ‘wholly inadequate’ compared to the ‘£0.75 million’ spent by the Welsh Government under previous contractual arrangements with relevant organisations in England. They therefore maintain it remains unclear how the promotion of careers will be funded, whether from fee income or separate funding from the Welsh Government.⁶³

82. The lack of funding set out in the Bill for professional development and the promotion of careers was also identified by the NUT who did not think that the resources are ‘remotely available’ for teachers alone and ‘certainly not enough’ for the other categories to be covered.⁶⁴

Minister’s evidence

83. When questioned on the funding arrangements for the Council and the lack of clarity over these figures, the Minister said there was a balance to be struck in terms of the Council being self-financing. He continued:

“it is very clear that the intent of the legislation is that the council should be more than the maintainer of a list. This is about a dynamic, professional process between the council and the professionals

⁵⁹ Written Evidence, EB 17

⁶⁰ ROP, paragraph 215, 2 October 2013

⁶¹ Written Evidence, EB 17

⁶² Explanatory Memorandum, paragraph 303

⁶³ Written Evidence, EB 17

⁶⁴ ROP, paragraph 137, 26 September 2013

involved. It is about professional development; it is about standards. It is not just about maintaining a register.⁶⁵

84. The Minister's official continued to clarify the confusion around the funding for CPD, she said:

"I thought that I just might helpfully clarify the £0.75 million. That is a long since historic figure, from when we worked with the Department for Education in England with the teacher development agency. So, it was about marketing campaigns—you may remember the advertisements for getting into teaching. The figure has not been anywhere near that amount for some considerable time. The sum of money that we have is, and currently remains at, £100,000."⁶⁶

Our view

85. The Committee believes the financial information contained in the Bill is inadequate and believes further consideration should be given to how the new body will be funded.

86. The Committee believes that any fee set should be equitable and fair, in terms of the salary difference between the people paying fees, and between different sectors, and that consideration should be given to the fee payment required for supply teachers.

The Committee recommends that the Council should set its own fees but that the Welsh Ministers should issue guidance, based on principles of fairness and equality, on the setting of registration fees.

The Committee recommends that the Minister clarifies the level of funding that will be in place for the Council's roles in CPD and the promotion of careers and how these will be delivered in practice.

⁶⁵ ROP, paragraph 77, 24 October 2013

⁶⁶ ROP, paragraph 78, 24 October 2013

6. Reform of the registration and approval of independent schools in respect of special educational needs

87. The Bill seeks to remove the duplication of registration requirements in the way that independent schools register to admit learners with special educational needs in order to reduce duplication and increase the information available about SEN provision in independent schools.

88. The EM outlines the current legislative arrangements. Namely,

- any establishment wishing to operate as an independent school needs to apply to the Welsh Ministers under section 160 of the *Education Act 2002* ('the 2002 Act');
- an independent school that wishes to admit a pupil with a statement of SEN must be approved to do so by the Welsh Ministers under section 347 of the *Education Act 1996* ('the 1996 Act').

89. The Bill aims to create a single process. This would be achieved by repealing s347 of the 1996 Act in its application to Wales whilst amending s160 of the 2002 Act, under which there would then be a single process. Independent schools registered under the new s160 process will need to specify the type of SEN provision they make.

90. The repealing of s347 would remove the current individual consent process for each application by a local authority to place a child with SEN in an independent school that does not have general approval.

Evidence from witnesses

91. Generally, evidence was supportive of the need to simplify the process.

92. Diverse Cymru welcomed the 'simplification and clarification of the process' and said that delays can have a severe impact on disabled children.

93. SNAP Cymru concurred, saying that the process needs to be understood by both young people and their families, and multi-agency practitioners and professionals, to assist decisions over placements.

94. However, there were a number of concerns about the implications of the removal of the case by case process.

95. The most significant concerns were raised by Estyn, although it is supportive of the broad thrust of the proposals. These concerns relate to the abolition of the individual ‘consents’ process under s347. This process ensures that the Welsh Government considers each individual application by a local authority to place a child with SEN in an independent school that does not have general approval on admission. In practice, Estyn advises on this process.

96. Estyn argues that this provides a ‘safety net’ which safeguards against its observation that, in its experience, ‘placing authorities do not always take enough care to ensure that a school is able to meet a pupil’s SEN’.⁶⁷ Therefore, what is seen as a ‘duplication’⁶⁸ by the Welsh Government, a view to some extent supported by parts of the third sector, is regarded by Estyn as an important safeguard.

97. Under the Bill, Estyn would carry out an annual inspection of all independent schools registered for SEN provision, but the inspectorate warns this will not compensate for the loss of the consents system as the annual monitoring process does not check the appropriateness of individual placements. Furthermore, the annual monitoring would be retrospective; as Estyn put it, ‘a child might be [inappropriately] placed at a school and it might be 12 months before we make an annual monitoring visit’. Estyn also said that monitoring is not focused on provision to individual pupils with SEN to the same extent as the advice it gives under the current consents system.

98. Estyn’s annual monitoring visits focus mainly on compliance with the Independent School Standards (Wales) 2003. They said that these Standards do not place enough emphasis on the school’s role in meeting all pupils’ special needs (regardless of whether or not they are funded by a local authority). They said current wording of the Standards is not robust enough to protect vulnerable learners, once SEN consent is removed.⁶⁹

99. In written evidence, Estyn appeared sceptical over the prospects for local authorities fulfilling the objective of placing learners with SEN in an independent school satisfactorily, reporting that, in general, ‘local authorities do not monitor the quality of educational placements well enough’.⁷⁰ Subsequently, Estyn qualified this, telling the Committee, that it was not saying the local authority ‘is not best placed or is not able’ to make

⁶⁷ Written evidence, EB 06

⁶⁸ ROP, paragraph 112, 24 October 2013

⁶⁹ Written evidence, EB 06

⁷⁰ Written evidence, EB 06

decisions and their placements are ‘usually appropriate’.⁷¹ However, Estyn confirmed that, on balance, it favoured the consents system as it allows it to give advice on how suitable a place is for an individual child, emphasising that this is a more effective safeguard than proposed annual monitoring.⁷²

100. Estyn’s concerns about the removal of case by case approval echoed the ‘nagging doubts’ of the NASUWT who expressed doubts about its merits as it represented a shift from a ‘child-centred’ approach to a ‘school-centred approach’.⁷³

101. They continued ‘I have always felt that the Welsh Government provided the safety net for the child and that there would be someone looking at this, not from the local authority perspective, but from the perspective of the needs of the child, hopefully without having to look at the funding arrangements ...’.⁷⁴

102. Estyn also raised questions about the affordability of the annual monitoring visits it would be expected to carry out. The inspectorate queried the costs estimated by the Bill in terms of the number of independent schools it may need to visit, and the resource required from its inspectors.⁷⁵ They also confirmed that there had been no discussions with the Welsh Government on this.⁷⁶

103. Concerns were also raised around the issue of information required under the section 160 process. The NDCS and the RNIB highlighted the requirement of the section 347 application for consideration of the qualifications of teachers employed to support pupils with a hearing, visual or multi-sensory impairment. The NDCS and the RNIB called for the single amended s160 process to include more detail on the specific provision for pupils with a sensory loss.⁷⁷

104. Representing The Third Sector Additional Needs Alliance (“TSANA”) in Committee, the NDCS expressed their reservations over the potential for ‘less detail and rigour in terms of making sure that ... schools are appropriate for pupils with SEN. They said they were ‘nervous’ about losing

⁷¹ ROP, paragraph 304, 2 October 2013

⁷² ROP, paragraph 294, 2 October 2013

⁷³ Written Evidence, EB 15

⁷⁴ ROP, paragraph 180, 26 September 2013

⁷⁵ ROP, paragraph 271, 2 October 2013

⁷⁶ ROP, paragraph 287, 2 October 2013

⁷⁷ Written evidence, EB 23

the specifications from s347 and urged the Welsh Government to look at how it could 'beef up s160'.⁷⁸

105. TSANA would like to see sufficient guidance in place for local authorities or regional consortia so they can adequately identify provision to meet learners' needs and requested 'assurances that s160 is going to be adequate, because, at the moment it is quite light touch'.⁷⁹

106. SNAP Cymru agreed with these concerns, stressing that greater clarity was needed over whether an independent school will state it admits learners.

Minister's evidence

107. Regarding the issues around safeguarding, the Minister said:

"Local authorities should be more than capable of making a decision on the appropriateness of a placement, best based on the individual's statement and Estyn's annual monitoring report of the setting. Taken together, that is a much more robust system than the one that we have at the moment."⁸⁰

108. Regarding the different information which is required under section 160 and section 347, the Ministers advisor said:

"The difficulty here is that at the moment we have a mixed economy. We have some placements and registrations under one part of the legislation and some under another, and children are being placed in different ways. So, we are looking broadly here for consistency—one single register. It will still fall to the local authority to reassure itself that an individual placement for a child is suitable to meet their needs and then to review that placement on a regular basis to ensure that it continues to meet that need. Registering under section 160 will provide clarity across all schools that wish to offer themselves to take children with SEN and provide consistent evidence of who may be able to meet which needs. From there, it is for the local authority."⁸¹

109. The Minister has issued a letter to the Committee which details that three independent schools responded to the Government consultation. The

⁷⁸ ROP, paragraph 7, 10 October 2013

⁷⁹ ROP, paragraph 10, 24 October 2013

⁸⁰ ROP, paragraph 101, 24 October 2013

⁸¹ ROP, paragraph 125, 24 October 2013

letter stated that ‘two independent schools agreed with the proposals, whilst one disagreed’. This letter is attached as an annex to this report.

Our view

110. Whilst the Committee can see the disadvantages of the current system in terms of duplication and complexity, the Committee remains unconvinced that the proposed changes will provide a sufficient safeguard, given the ending of Welsh Government, and in practice Estyn, consideration of individual cases.

111. The Committee found the evidence from Estyn powerful, particularly its concerns about the loss of the individual consent which it considers to be a ‘safety net’. The Committee notes there is a difference of opinion amongst the Minister and Estyn on whether the proposed arrangements will have more robust safeguards. The Committee notes that the Governments consultation had evidence from two independent schools in favour of the changes, but as no evidence was provided to the Committee in support of the proposed new system for approving independent schools, the Committee is unable to support the changes.

The Committee is not against simplifying the legislative process for admitting learners with SEN to independent schools and reducing complexity but recommends the Minister reconsiders the proposal to abolish the current case by case approval, including consideration of whether sufficient safeguards will be in place.

7. Post-16 assessment of educational and training needs and specialist Further Education

112. The EM says that the Bill:

“will also provide for better transition for SEN learners from school into further education by placing responsibility for assessing the needs of, and securing specialist post-16 education for learners with learning difficulties and/or disabilities with the local authority.”⁸²

113. The EM continues:

“The Bill seeks to improve the assessment of additional learning needs for Post-16 learners. It seeks to support better transition planning for learners moving from school to FE, facilitate better liaison between schools, local authorities and FE colleges and specialist providers. Its core objective is to bring about a less complex and bureaucratic system that better meets and protects the needs of learners whilst also delivering value for money.”⁸³

Evidence from witnesses

114. The evidence showed general support for the intention to establish a simpler, less complex and bureaucratic system that provided better transition for learners between school and post-16.

115. Comments and concerns centred on the resource and expertise capacities of local authorities, a potential conflict of interest for local authorities, and the reliance on statements as the basis of the duty to carry out Education and Training Needs assessments.

116. In terms of resource implications for local authorities, whilst the WLGA support the principle of local authorities being given this role, they had serious concerns about the financial implications and believed there needs to be a realistic assessment of the costs for local authorities taking on the additional duties on assessment and provision. They told the Committee that the pressures are ‘unpredictable and very difficult to manage’ and ‘it inevitably will be problematic’.⁸⁴

⁸² Explanatory Memorandum, paragraph 8

⁸³ Explanatory Memorandum, paragraph 95

⁸⁴ ROP, paragraph 291, 26 September 2013

117. UCAC agreed with these concerns, they ‘want to be sure that the transfer of responsibilities to local authorities would go hand in hand with transfer of sufficient resources to carry out responsibilities effectively, whilst the NASUWT said there is a need to ensure there are no ‘potential hidden costs’ to local authorities.’⁸⁵

118. Concerns were also raised regarding the expertise required within local authorities to carry out the assessments. The Association of National Specialist Colleges (Natspec) said there was a need for qualified and experienced staff to undertake the assessments and it was unclear who in local authorities would have the skills and expertise to do this.⁸⁶

119. This issue also emerged from the focus groups held by the Assembly’s Outreach team. Representatives from both Rhondda Cynon Taf and Monmouthshire said that the expertise to carry out assessments is not there at present.⁸⁷

120. TSANA told the Committee that its members were asking who within local authorities is going to carry out the assessment, stressing the importance of ensuring whoever does this has been adequately trained. TSANA reported that ‘under the current system, that is something that we struggle with and something that we would really like to see being addressed’.⁸⁸

121. Carmarthenshire Council’s Educational and Child Psychology Service (ECPS) said that educational psychologists would be the most qualified and appropriate professionals to undertake post-16 assessments as they are well positioned to provide a holistic assessment of the young person’s needs. However, they also said they were not enough of them in place and that there were also workforce planning issues to ensure there were a sufficient number in the future.⁸⁹

122. A common concern raised in evidence has been the potential for local authorities to have a conflict of interest due to their dual role in assessing needs and making decisions over how these are met.

⁸⁵ Written evidence, EB 15

⁸⁶ Written evidence, EB 24

⁸⁷ Written evidence, EB 30 & EB 31

⁸⁸ ROP, paragraph 97, 10 October 2013

⁸⁹ Written evidence, EB 21

123. The NDCS and the RNIB, were concerned that local authorities will have a 'bias incentive' towards supporting learners with additional learning needs in a mainstream FE placement, which they will not have to fund.⁹⁰

124. Estyn recognised that the 'obvious loophole' was the 'temptation' for local authorities to 'offload some placements on to FEIs [*Further Education Institutions*] as opposed to specialist colleges that they would have to pay for themselves'.⁹¹ The inspectorate had also posed the question in its written evidence: 'is there a risk that, in the light of financial pressures, [local authorities] will seek cheaper options rather than those that best meet the needs of the learners?'⁹²

125. TSANA said they had a lot of concerns about this:

"My biggest concern is that local authorities are not the sole funder. ... That gives local authorities a massive incentive to push towards the mainstream, which really worries us in relation to this Bill. If this Bill is to go ahead, we really need to look at that in more detail and make sure there is appropriate monitoring of that situation."⁹³

126. The fact that local authorities will be the funder of some and not all of the provision options available for them to recommend has been highlighted as particularly significant. A distinction was therefore drawn with pre-16 SEN whereby the local authority would shoulder the costs regardless of the provision that was decided upon. TSANA told the Committee:

'I think it is slightly different from the current situation, because, when you are looking at schools, yes, local authorities are the assessors and funders, but they are the funders of all support, whereas, under this legislation, they will be the assessors of all support and the funders of only part of the support, which leads them to the big incentive.'⁹⁴

127. Furthermore, as summed up by the Association of National Specialist Colleges (Natspec):

"The local authority [will act] as assessor for all, but only as commissioner and funder for some – those assessed to need

⁹⁰ Written evidence, EB 23

⁹¹ ROP, paragraph 328, 2 October 2013

⁹² Written evidence, EB 06

⁹³ ROP, paragraph 72, 10 October 2013

⁹⁴ ROP, paragraph 106, 10 October 2013

specialist provision. There is therefore a **perverse incentive for local authorities to assess for [further education] places because they will not have to bear their cost. [their emphasis]**⁹⁵

128. This led several consultation respondents, including TSANA's members Afasic Cymru⁹⁶ and the National Autistic Society⁹⁷ in their individual submissions, to call for funding in this area to be ring-fenced to avoid it being absorbed amidst local authorities' other cost pressures.

129. However, TSANA (represented by NDCS) told the Committee that ring-fencing was only one option and that 'robust monitoring of duties is the way forward'.⁹⁸

130. The potential for a conflict of interest for local authorities was, to a degree, recognised by the WLGA but they pointed to safeguards and the appeals process as a sufficient counterweight.⁹⁹

131. Evidence received identified concerns that the provisions under Section 44 of the Bill regarding the duty to carry out an Education and Training Needs assessment only apply where the learner has a statement of SEN. Section 44 also provides a discretionary power where a Local Authority may undertake an assessment of any learner from the last year of compulsory schooling up to the age of 25 who appears to have a learning difficulty.

132. The Children's Commissioner for Wales raised concerns over the 'demarcation' between 'mandatory duties' and 'discretionary powers'.¹⁰⁰

133. Estyn referred to 'an unhappy distinction'¹⁰¹ between different levels of requirement.

134. Evidence showed a variation in the extent to which local authorities' use of statements, and how this leads to pupils with similar levels of needs across different authorities being treated differently in terms of having statements. Estyn report that across all independent schools in Wales, 11.8

⁹⁵ Written Evidence, EB 24

⁹⁶ Written Evidence, EB 18

⁹⁷ Written Evidence, EB 19

⁹⁸ ROP, paragraph 95, 10 October 2013

⁹⁹ ROP, paragraph 312, 26 September 2013

¹⁰⁰ Written evidence, EB 06

¹⁰¹ ROP, paragraph 303, 2 October 2013

per cent of pupils have SEN but not statements, whilst 4.4 per cent have a statement.¹⁰²

135. Estyn point out that over recent years local authorities have sought to reduce the number of statements they issue and to provide support through the other two stages of support, ‘School Action’ and ‘School Action Plus’.¹⁰³

136. SNAP Cymru commented that the issue was not so much about statements but whether needs are being met:

‘[The issuing of statements] is not the marker of whether a child’s needs are being met. A child’s needs are met if they are assessed correctly...Careers Wales has in my experience, always assessed children without statements as well as the request of the school. That has been done, although it might not have been in its remit.’¹⁰⁴

137. TSANA stressed that provision for post 16s should not be merely down to ‘goodwill’ and asked the Welsh Government to look at:

‘expanding the access criteria to include those who are eligible for a statement, as opposed to only those who have a statement, and to include those who feel that their needs are going to increase.’¹⁰⁵

138. Evidence also identified concerns on the timeframe in which local authorities undertake the assessments and make decisions about placements. The National Autistic Society (NAS) called for an amendment to the Bill requiring local authorities to make funding decisions by 31 March each year. This follows a similar recommendation made by the Enterprise and Learning Committee in its Inquiry into [Specialist provision for young people with autism in further education](#)¹⁰⁶ but evidence put forward by the NAS indicates that families are generally not receiving decisions by the end of March of the same year that an education provision would commence in the September.¹⁰⁷

139. Diverse Cymru also expressed concerns about the timescale within the Bill for appeals against non-completion of assessments after a request is

¹⁰² Written evidence, EB 06

¹⁰³ Written evidence, EB07

¹⁰⁴ ROP, paragraph 98, 10 October 2013

¹⁰⁵ ROP, paragraph 78. 10 October 2013

¹⁰⁶ www.assemblywales.org/bus-home/bus-third-assembly/bus-committees/bus-committees-scrutiny-committees/bus-committees-third-els-home/bus-committees-third-els-report/bus-committees-third-el-report-el3-10-r04.htm

¹⁰⁷ Written evidence, EB 19

made in the final year of compulsory education.¹⁰⁸ They argued that rather than having to wait six months before making an appeal, as in the Bill, this should be reduced to six weeks. The NDCS and RNIB were also disappointed with the six month timeframe.¹⁰⁹

Minister's evidence

140. The Minister was asked how local authorities have responded to the proposed changes. One of the Welsh Government officials accompanying the Minister said that discussions with local government indicated they are 'relatively comfortable with the broad proposals'.¹¹⁰

141. When asked about the resource implications for local authorities the Minister referred the Committee to the costs detailed in the Explanatory Memorandum, he continued:

“Details that are related to the skills and the expertise would be taken into account as part of the transition planning that we would have to go through with local authorities.”¹¹¹

142. Regarding a potential conflict of interests for local authorities who are under financial constraints, the Minister said:

“If the local authority fails in its duty to the learner, it will have failed. Safeguards are built into the system to make sure that there is recourse for a parent and a child to take. The duty is there upon local government to make sure that the needs of the learner are satisfied. If they are not, the system provides a path of recourse because the local authority has failed in its duty.”¹¹²

143. Regarding the statutory duty to assess learners with a statement and the discretion duty to assess learners who appear to have a learning need the Minister told the Committee that the criteria and circumstances, in which it would be appropriate for local authority to use its discretionary power, rather than its duty, would be addressed in a code of conduct.¹¹³

¹⁰⁸ Written evidence, EB 10

¹⁰⁹ Written evidence, EB 23

¹¹⁰ ROP, paragraph 182, 17 July 2013

¹¹¹ ROP, paragraph 143, 24 October 2013

¹¹² ROP, paragraph 108, 24 October 2013

¹¹³ ROP, Paragraph 32, 17 July 2013

144. When questioned further on the reliance of having a statement, the Minister said:

“There are currently two categories of learners: those with statements and those without. The proposals in the Bill have to be set in the context of the current statutory requirements for SEN, and the entitlement to assessment has to be consistent with those currently available to learners with and without statements. That does not mean that young people without a statement cannot request them, and there would also be a right of appeal to a decision not to carry out an assessment.”¹¹⁴

145. The Minister’s official continued:

“we can identify learners with statements as a specific group. Learners beyond that who may need an assessment post-16 are more difficult to define on the face of the Bill. However, the code of practice, the statutory guidance, that will sit alongside it will set out guidelines to learners that would fall into that group, those who we would expect to normally receive an assessment.”¹¹⁵

146. The Minister was also asked to consider changing the timescales relating to post 16 assessments. He said that regulations would contain details on timetabling and said:

“I will undertake to do some further work on that as well as part of the run-up to the detail being drawn up on timetabling. The content of regulations would be subject to consultation as well.”¹¹⁶

Our view

147. As detailed in the ‘General Principles’ section of this report, the Committee believes these provisions would fit better in an SEN specific Bill. The Committee believes a holistic approach to the education support for learners should be provided, and this separation of pre 16 and post 16 increases the possibility of learners who need support not being identified.

148. The Committee thinks the evidence provided makes a strong case for these provisions of the Bill to be removed and further consideration given.

¹¹⁴ ROP, paragraph 148, 24 October 2013

¹¹⁵ ROP, paragraph 149, 24 October 2013

¹¹⁶ ROP, paragraph 157, 24 October 2013

149. The Committee understands that this may create delays in implementing support for some learners, but firmly believes this is preferable to the implementation of inadequate procedures.

150. In reaching a decision, the Committee is influenced by the considerable variations across local authorities in Wales in terms of issuing statements and practice in meeting SEN and Additional Learning Needs (ALN). It notes that the duty on local authorities to undertake an assessment is based on whether that learner has a statement, despite this level of variation and the Welsh Government's stated policy direction towards replacing statements with Individual Development Plans and the concept of SEN with ALN.

151. Should the Minister be minded not to remove these provisions the Committee makes the following comments and recommendations.

The Committee agrees that the change in procedure for assessing and supporting education for learners post 16 risks creating a conflict of interest for local authorities. The Committee notes that local authorities are facing a continued period of austerity, and recommends that reassurance and guidance be issued by the Minister to ensure that funding decisions are made only on the basis of educational need and not based on budget pressures.

The Committee also believes the concerns around the expertise of local authorities to undertake the work required are valid, and the Committee particularly notes the comments evidence regarding the lack of education psychologists in Wales.

The Committee agrees that the distinction between the statutory duty and the discretionary power does create a risk that learners who require support may be missed, and recommends the Minister review this section.

The Committee recommends that the timescale set out in the Bill for the length of time a learner must wait before submitting an appeal against non-completion of assessment, and a deadline for decisions to be made are reconsidered.

The Committee recommends the Minister review the distinction between the statutory duty and discretionary power in Section 44 and its reliance on whether a learner has a statement of SEN. The Committee firmly believes this section allows for unequal outcomes for learners due to the variation between local authorities and poses a risk for learners needing support.

8. School term dates

152. Currently, school term dates are set by local authorities for community, community special, voluntary controlled and nursery schools, and by governing bodies for voluntary aided and foundation schools.

153. The Bill seeks to harmonise school term (and therefore school holiday) dates across Wales through placing a responsibility on local authorities and governing bodies of voluntary aided and foundation schools in Wales to work together to co-operate and co-ordinate with each other on term dates.

154. The EM says:

“The Bill will bring greater coherence by changing the way that school term dates are set so that they may be harmonised across all maintained schools in Wales.”¹¹⁷

155. However, the Bill will still allow for variations occurring very occasionally and where they can be fully justified.

156. The Bill also contains a discretionary power for Welsh Ministers to direct the bodies responsible and intervene where necessary by telling them what their school dates must be.

157. In addition, even where dates have been agreed between the bodies themselves and there is no dispute to resolve, Welsh Ministers will be able to exercise their discretionary power if they have reason to believe these need amending. The need to make sure that terms are as equal in length as possible is given in the EM as an example of such a circumstance. Welsh Ministers will also allow variations in dates where there are good reasons such as a major event taking place in a local area, with the Ryder Cup held in Newport in 2010 given as an indicative example.

Evidence from witnesses

158. The proposal to harmonise school term dates has been generally welcomed by all those who have given evidence. The WLGA said that many attempts had been made to encourage local authorities to set standard dates but that these had failed. They therefore very much welcomed the provision for Ministerial intervention where necessary.

¹¹⁷ Explanatory Memorandum, paragraph 7

159. UCAC¹¹⁸ and the UCU¹¹⁹ in particular highlighted the educational case for having standardised terms due to the collaboration that takes place at 14-19, often across local authority borders particularly in the Welsh-medium sector.

160. There was also a clear indication of support for harmonised term dates from the online survey carried out by the Assembly's Outreach team. Of 428 people who answered the question, 61 per cent would prefer dates to be the same across Wales with 17 per cent disagreeing and 22 per cent being unsure.¹²⁰

161. An exception to the general support for the proposal was the Catholic Education Service who said it was imperative that Catholic schools are able to set holidays so that they can ensure observance with Church teachings, particularly at Easter.

162. 65 per cent of those surveyed thought the Welsh Government should be able to decide term dates when local authorities and governing bodies cannot agree. 15 per cent thought the Welsh Government should not be able to do this whilst 21 per cent were unsure.¹²¹

Minister's evidence

163. The Minister told the Committee that he was 'very sensitive'¹²² towards the issues raised and that there would 'no doubt still be some kind of variation'¹²³ across Wales and that he expected local authorities to be able to co-ordinate and manage such issues.

164. When asked about what type of variation he envisages under the Bill despite the overall objective (and Ministerial enforcement) of harmonised school terms; i.e. whether it would be acceptable for all faith schools to have different Easter holidays where desired so long as other schools' term dates were consistent across local authorities the Minister said:

"You are quite right to say that these issues already exist within local authority areas; there are, out there, local authorities that work in partnership with faith schools very well in trying to resolve concerns around Easter in particular, and they have a good historical track

¹¹⁸ ROP, paragraph 214, 26 September 2013

¹¹⁹ Written evidence, EB 16

¹²⁰ Written evidence, EB 30 & EB 31

¹²¹ Written evidence, EB 30 & EB 31

¹²² ROP, paragraph 201, 17 July 2013

¹²³ ROP, paragraph 202, 17 July 2013

record of making it work. Under that duty of co-operation and co-ordination, we would expect all local authorities to take a sensitive approach to this issue in particular. We know that it is a resolvable problem, because we know that some local authorities do this as a matter of course. So, I am very much aware of the issue, and very sensitive towards it.”¹²⁴

165. The Minister also suggested other reasons for Ministerial intervention may include ‘major sporting events’¹²⁵ and ‘unhappy circumstances...the measles outbreak’¹²⁶.

Our view

166. The Committee believes the harmonisation of school terms is desirable and can see the advantages of this approach.

167. However, it was unclear how and when the Minister would use the power of direction under the Bill to intervene over the setting of school terms.

168. Some Members of the Committee were also sympathetic to the issues raised by faith schools in terms of ensuring that due regard is given to days of religious significance when setting school terms. The Committee believe that it has not been made sufficiently clear how flexibility and accommodation may be given to particular categories of schools on days of religious significance, for example Christian schools at Easter, whilst achieving the objective of harmonisation.

The Committee would like the Minister to provide more detail as to the parameters on when he, or his successor(s), may seek to intervene on the setting of school terms, where a consensus is reached but the Welsh Government does not consider these common term dates appropriate, or where a consensus cannot be agreed locally.

The Committee would also like the Minister to clarify what balance he intends to strike between harmonised school terms and accommodating the preferences of faith schools.

¹²⁴ ROP, paragraph 201, 17 July 2013

¹²⁵ ROP, paragraph 206, 17 July 2013

¹²⁶ ROP, paragraph 209, 17 July 2013

Huw Lewis AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

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

13 November 2013

Dear Ann,

CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE EDUCATION (WALES) BILL

Following my appearance before the Children and Young People Committee on 24 October 2013 I agreed to provide Members with further details on the transferring of SEN pupils between local authorities, the consultation and responses received relating to Independent schools (s347), and the specific difference between s160 and s347.

I have also detailed information regarding the School Term Dates Equality Impact Assessment in order to clarify a point raised by Rebecca Evans AM.

The consultation relating to Independent schools (s347)

In September 2012, the Department for Education and Skills published a consultation on '*Reform of the registration and approval of Independent Schools in respect of special educational needs*'. The consultation took place over a six week period and ended on the 1 November 2012. The Welsh Government published a summary of consultation responses in June 2013. The consultation document and response can be accessed at:

<http://wales.gov.uk/consultations/education/senregistration/?status=closed&lang=en>

All independent schools and the Welsh Independent School Council were written to as part of this consultation and invited to comment on the proposal to repeal section 347 (in view of the existing provisions under section 160 of the Education Act 2002 ("section 160")) and on proposed measures to be put in place to support this legislative change.

The Welsh Government received three responses from independent schools to this consultation. Two independent schools agreed with the proposals, whilst one disagreed. The one independent school that disagreed with the proposal provided supporting comments which highlighted that they disagreed on the basis that repealing section 347 would leave no requirement for Independent schools to be annually monitored by Estyn.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

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This is a misunderstanding of the legislative proposal, as independent schools that admit pupils with statements of SEN are annually monitored against the independent school standards made under section 157 of the Education Act 2002.

Overall, the majority of those responding to the six questions posed in the consultation were in agreement with the proposals.

An explanation as to what is required under the section 160 process compared with that of the section 347 application

All independent schools must be registered. Schools apply to be registered under section 160 of the Education Act 2002 (“section 160”). An application for registration by any school is assessed by Estyn against the Independent School Standards (“ISS”), these are standards set out in regulations¹.

As part of the registration process, a school can be registered to admit pupils with SEN regardless of whether they have a statement. Any school wishing to admit a pupil with SEN, which has not been registered to do so can apply to do so under section 162 of the Education Act 2002 (“section 162”). This is known as an application for a material change to the registration.

Independent schools that wish to admit pupils with statements of SEN must be approved by the Welsh Ministers under section 347 of the Education Act 1996 (“section 347”).

An approval under section 347 can be a general approval which means that the school is approved to admit any pupil with a statement of SEN. Regulations made under section 347² (“the approval regulations”) set out the criteria to be taken into account to approve the school.

If the school does not have general approval and a pupil with SEN wished to attend that school, the Welsh Ministers can consent to the placement.

A summary of the information requirements, the ISS and the approval regulations is at Annex A. It is the view of the Welsh Government that the registration regime and the ISS provide sufficient safeguards that there is no longer a need for the approval regime.

Individual Placements

During 2012, there were 386 pupils with a statement of SEN on roll within 34 independent schools in Wales. Of those, the Welsh Ministers provided approval for 7 pupils with statements of SEN to be placed in independent schools in Wales. Welsh Ministers also provided approval for 5 placements within English schools.

Where consent for the admission of an individual pupil to be placed in the school is sought, if the independent school is in Wales, the Welsh Government seeks advice from Estyn that the placement is suitable. Estyn’s advice is based on their assessment of the individual’s statement and its own monitoring report for that independent school. The advice from Estyn then forms the basis of the Welsh Ministers’ decision.

If the independent school is in England then Welsh Government officials make a recommendation to the Welsh Ministers following an assessment of the facts which consists of:

¹ Independent School Standards (Wales) Regulations 2003 made under section 158 of the Education Act 2002.

² Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994

- a. Assessing the independent school's criteria fits with the statement of SEN. i.e. the sex, age range, and type of SEN provision provided.
- b. Assessing the latest Ofsted report on the school against compliance with independent school standards; and
- c. Contacting the relevant local authority where the independent school is located to identify any contentious issues, i.e. child protection, etc.

We consider the local authority to be best placed to assess the SEN provision available within an independent school against the needs set out within a pupils statement of SEN, including for those pupils it is looking to place in an English school.

Monitoring

If a school has general approval under section 347 the Welsh Government has an agreement with Estyn that they will undertake an annual monitoring visit. However where individual consent under section 347 has been given to allow the placement of a pupil, no annual monitoring takes place.

Education (Wales) Bill

In addition to repealing section 347, the Education (Wales) Bill seeks to reform the way that independent schools register to admit pupils with SEN. The Bill will amend section 160 to strengthen the registration regime of independent schools by changing the way in which independent schools register to admit learners with statements of SEN.

Schools who register to admit pupils with statements of SEN, must also indicate what type and level of SEN provision they are able to cater for. Those schools will be subject to regular monitoring visits by Estyn. The summary of the monitoring report will be published on Estyn's website so that it is available to those interested in placing pupils at the school.

If a pupil is admitted to a school that has not been registered to admit pupils with a statement of SEN, the Welsh Ministers expect that an application for a material change should be made within 6 months of that placement. If that does not happen, the Welsh Ministers can take enforcement action against the independent school if it considers that it is necessary to do so.

Overall we consider that this reform will:

- a. provide for clearer law;
- b. provide better quality information about independent schools for those placing children with statements of SEN
- c. strengthen safeguarding as more schools will be subject to monitoring visits by Estyn than would be at present.

The transferring of SEN pupils between local authorities

Provisions

The Education (Wales) Bill includes provision to give local authorities responsibility to make arrangements for the assessment of young people with learning difficulties and to secure specialist further education provision where it is necessary to meet assessed education and training needs.

These proposals will remove the current separation of responsibility for assessing and securing specialist provision from age 16 for learners with learning difficulties and/or disabilities. This will provide greater continuity between pre and post-16 education and

training and support better transition planning as those already familiar with the learners and their needs can support the assessment of needs and provision required to meet them.

The Bill also proposes the introduction of a new right of appeal to the Special Educational Needs Tribunal (SENTW) which will bring the rights of learners aged 16 to 25 more closely in line with younger learners and remove the current inequality for some learners depending on where they receive their education.

Assessment

In relation to arranging for assessment the key responsibilities are on the face of the Bill and regulations will set out the detail arising from these. In addition, a Statutory Code of Practice will guide authorities in discharging their duties. This will enable the use of language more easily understood by interested parties. A Code will also reflect best practice and be developed and adapted over time.

Local authorities will be required, in certain circumstances, to secure an assessment of the post-16 educational and training needs of a person for whom it maintains a statement of SEN. This requirement applies where a person is in their last year of compulsory schooling, or over compulsory school age, and the local authority believes that he or she wishes to undertake some form of post 16 education or training on leaving school.

In addition, there will be a discretionary power on a local authority to secure a post 16 education and training needs assessment of a person, subject to their meeting certain requirements set out in the Bill. These are that; the person must be ordinarily resident in the authority's area; either in the last year of compulsory schooling or over compulsory school age but under 25; have a learning difficulty; and be either receiving post 16 education or training or seem to wish to do so.

There are a number of regulation-making powers relating to this area. It is expected that provision made under these powers will be contained in two sets of regulations. One set of Regulations will deal with appeals (tribunal rules and period within which local authorities must comply with orders of the Tribunal, for example) and the other set of Regulations will make provision about assessment of needs and related matters including:

- what goes into the assessment of needs;
- how assessment requests are dealt with;
- time limits for assessment;
- when someone can be considered ordinarily resident in a local authority area;
- when further assessments can be carried out;
- specifying circumstances in which the local authority no longer has to make provision set out in the assessment.

These regulation making powers will allow the Welsh Ministers to set out when a learner is/is not to be treated as being ordinarily resident in a local authority area, reducing the potential for disruption to learner's education should they move from one authority to another. These powers could for instance be used to provide that the duty is to continue to apply for a specified period after a person moves out of an authority's area, and/or that the duty is to cease to apply if a person fails to co-operate in certain circumstances with provision for further assessment. Detailed guidance setting out the position regarding a learner moving from one authority to another will be addressed in the Code of Practice. It is, in any event, anticipated that once drafted, the regulations and the Code will be consulted upon.

The proposed regulations together with a statutory Code of Practice will provide both detail and also provide the level of flexibility that is needed to allow for adaptation over time, as policy develops or as circumstances affecting the detail change. It is proposed that draft regulations and a draft Code of Practice to which local authorities must have regard, will be prepared and consulted on by the end of 2014 in order to give local authorities sufficient time to prepare for transition.

School Term Dates Equality Impact Assessment

Ms. Evans queried the impact on the protected characteristic of religion and belief in the Equality Impact Assessment being recorded as all 3 possible options i.e. “positive”, “negative” and “none/ negligible”.

The text in the EIA explains that “*It is possible for the impact on certain Christian religious groups who wish their children to be in school during Holy Week (i.e. up to including Maundy Thursday) to vary*”.

Possible impact will depend on whether or not the term dates which are set accord with these Christian groups’ wishes for their “faith” schools. If dates do not accord with their wishes, it could be said to have a negative impact on these Christian groups. By contrast, if the term dates do accommodate “faith” school needs there should be no/ negligible impact on these Christian groups as their wishes have been met.

In the same way as for families who do not belong to these Christian groups, there may also be a positive impact for some faith school staff, pupils and their families as they will no longer have to find and finance additional childcare.

I trust that the information I have provided is helpful and clarifies the position on the issues above to the Committee.

Yours,



Huw Lewis AC / AM

Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Current Information requirements to support Welsh Ministers to make a decision under section 160, section 162 and section 347

<p>Section 160 of the Education Act 2002 – to be classed and operate as an independent school</p> <p>Section 162 of the Education Act 2002 – application for ‘material change’ to the original registration (in the context of admitting pupils with statements of SEN)</p>	<p>Section 347 of the Education Act 1996 – Approval to admit pupils with statements of SEN, generally</p>	<p>Section 347 of the Education Act 1996 – Specific approval for the placement of an individual with a statement of SEN</p>
<p>Section 160</p> <p>Prescribed information within an application for independent status:</p> <ul style="list-style-type: none"> the age range of pupils; the maximum number of pupils; whether the school is for male or female pupils or both; whether the school provides accommodation for pupils; <p>In addition, a school must also include details of whether it admits pupils with SEN regardless of whether they have a statement.</p> <p>Establishments must also provide Welsh Ministers the following to support the application:</p> <ul style="list-style-type: none"> Plans of the school showing the layout of the premises and accommodation of all buildings. 	<p>Section 347</p> <p>Criteria that independent schools must comply with before being approved:</p> <ul style="list-style-type: none"> suitability of proprietors and staff (with particular reference to the suitability of teachers for visually and hearing impaired pupils); suitability of residential care staff when the school is a boarding school; admission of the pupils to the schools, whereby a pupil will not be admitted if: <ul style="list-style-type: none"> i. the school is unable to provide full-time appropriate education, 	<p>Section 347</p> <ul style="list-style-type: none"> a copy of a child’s statement of SEN; a recommendation for that child to be placed in a named independent school; written confirmation from the independent school that they have a place available to accept that child advice from Estyn that the placement is suitable.

<p>Detailed curriculum policies, schemes of work (for the subjects taught) and the procedures by which pupils' work and progress will be assessed.</p> <p>Copies of the school's written policy on: Bullying; Safeguarding and promoting the welfare of children who are pupils at the school; Safeguarding and promoting the health and safety of pupils on activities outside the school; and promoting good behaviour amongst pupils.</p> <p>A copy of the school risk assessment.</p> <p>A copy of the school complaints procedure.</p> <p>All independent schools must satisfy the Welsh Government of the suitability of the proprietor, who will be subject to a check undertaken by the Disclosure and Barring Service.</p> <p>Schools will be assessed by Estyn based on standards prescribed within the Independent School Standards (Wales) Regulations 2003. These include:</p> <p>The quality of education provided in the school, covering in particular:-</p> <ul style="list-style-type: none"> ○ the curriculum, requiring schools to implement an appropriate curriculum policy, supported by plans and schemes of work, with the aim of securing an appropriate, broad and balanced education for pupils of all abilities including those with a statement of SEN without being prescriptive about what independent schools are required to teach: ○ the teaching in the school; ○ evaluation of pupil performance; and ○ effective provision for those whom Welsh or English is an additional language. <p>The spiritual, moral social and cultural development of pupils at the school, which covers the broader</p>	<p>or</p> <ul style="list-style-type: none"> ii. that it would be incompatible with any condition imposed by the Welsh Ministers, or iii. that it might not breach any maximum school admission number; <p>exclusions from the school are not to be unreasonable;</p> <p>health and welfare of the pupils is to be provided by suitably qualified persons; to promote the welfare and safeguard boarders at a school (if relevant) and to maintain health and medical records;</p> <p>substances and apparatus involving health hazards that involve a prescribed amount of radioactive material or in vacuo whereby accelerated electrons are to be used for instruction at the schools, requires a prior notification to the Welsh Ministers;</p> <p>collective worship and religious education should be, as far as practicable, attended by and received by pupils;</p> <p>incident and punishment books to be kept; and</p> <p>standards of the premises shall conform to the standard prescribed under section 542 of the 1996 Act.</p> <p>Once a school is approved, there are further requirements to be complied</p>	<p><u>Monitoring Requirements</u></p> <p>None. There are no requirements for Estyn to monitor an independent school where Welsh Ministers have given specific approval for the placement of an individual with a statement of SEN.</p>
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<p>development of pupils and sets out some principles which the school should seek to promote.</p> <p>Welfare, health and safety of pupils, covering in particular:</p> <ul style="list-style-type: none"> ○ the requirement to have bullying, safeguarding, health and safety, behaviour, and first aid policies; ○ the extra standards which apply when a school provides accommodation or boarding; ○ levels of fire safety; ○ proper supervision of pupils; ○ keeping records of sanctions imposed for disciplinary offences; and ○ maintaining admissions and attendance records. <p>The suitability of staff, supply staff and proprietors, covering in particular:</p> <ul style="list-style-type: none"> ○ the checks which must be carried out in relation to staff employed at the school, including Disclosure and Barring Service checks, overseas conduct investigations, right to work in the UK and other suitability indicators; <p>Premises of and boarding accommodation at the school;</p> <p>The provision of information by the school, covering in particular:-</p> <ul style="list-style-type: none"> ○ information, the availability of which is to be notified to parents and prospective parents, copies of which are to be provided on request; ○ parents' rights to be informed of the results of the findings of inspections of the school; ○ the information which must be provided to any inspectorate inspecting the school; ○ annual reports to parents in connection with each individual pupil setting out progress and attainment; ○ accounts to be provided to local authorities where local authorities wholly or partly fund pupils at the school; ○ information required by any local authority for the purposes of reviewing any SEN pupil's statement of 	<p>with. These include:</p> <ul style="list-style-type: none"> appropriate education provision; changes in the control of the school should be notified to the Welsh Minister; notification of substantial alteration to the premises to the Welsh Minister; requesting advice from the fire and rescue authority; misconduct reports in respect of dismissed (or who would have been dismissed) employees to the Welsh Minister and relevant local authorities; application of provision relating to school year and day and leave of absence; provision of written reports on children with statements to a local authority; provision of information to the appropriate person in respect of a child with SEN when a child leaves the school to go to another school or institution; report any death, illness or injury to prescribed people; grant the local authority and parents access to the school and boarders; and publish a prospectus to contain prescribed information. 	
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<p>SEN; and</p> <ul style="list-style-type: none"> ○ the provision to the Welsh Ministers of a fire safety risk assessment. <p>The manner in which complaints are handled by the school.</p> <p>Independent schools may also apply to Welsh Ministers under the existing provision of section 162, for “material changes” to its original registration, i.e. an independent school could apply to broaden its range of SEN provision under s162.</p> <p>Section 162</p> <p>Section 162 of the Education Act 2002 requires that all independent schools must gain approval before implementing certain specified changes. In the context of admitting pupils with statements of SEN, the schools will need to provide within its application:</p> <p>Any proposal to admit pupils with special educational needs:-</p> <ul style="list-style-type: none"> ○ Details of the numbers and age range of proposed pupils, together with information about the types of SEN to be catered for. Also curriculum details, schemes of work and where alterations have been made to the school premises, the school plans. <p>Monitoring Requirements</p> <p>After 3 months of operation, following initial registration, Estyn will visit the independent school to confirm that it continues to meet the standards for registration once pupils have been admitted and the school is operational.</p> <p>Independent schools are then inspected routinely by Estyn</p>	<p><u>Monitoring Requirements</u></p> <p>Where an independent school has been approved (under section 347) to admit pupils with statements of SEN generally, Welsh Ministers have an agreement with Estyn to annually monitor those schools.</p> <p>This annual monitoring visit will review the SEN provision against the Independent School Standards. <i>This annual monitoring visit is the same as that conducted under section 160 where an independent school is registered to admit pupils with SEN regardless of whether they have a statement.</i></p>	
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<p>against the Independent School Standards (Wales) Regulations 2003,. These inspections take place at least every six years, however inspections will be more frequent where a school is giving cause for concern.</p> <p>Where an independent school is registered (under section 160 or following approval for a material change to its registration under section 162) to admit pupils with SEN regardless of whether they have a statement, it will be subject to an annual monitoring visit by Estyn. This annual monitoring visit will review the SEN provision against the Independent School Standards.</p>		
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Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at

www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=1305

17 July 2013

Huw Lewis AM	Minister for Education and Skills, Welsh Assembly
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26 September 2013

Dominic MacAskill, Regional Manager	UNISON Wales
Martin Hird, Senior Organiser responsible for Public Services	GMB
Owen Hathway, Wales Policy Officer	NUT Cymru
Rex Phillips, Wales Organiser	NASUWT Wales
Rebecca Williams, Policy Officer	UCAC
Dr Chris Llewelyn, Director of Lifelong Learning	WLGA
Daisy Seabourne, Lifelong Learning Policy Manager	WLGA

2 October 2013

Dr Philip Dixon, Director	ATL Cymru
Lisa Edwards, Political Liaison Officer	UCU Wales
Anna Brychan, Director	NAHT Cymru
Robin Hughes, Secretary	ASCL Cymru
Angela Jardine, Chair	GTCW
Gary Brace, Chief Executive	GTCW
Ann Keane, Chief Inspector	Estyn
Meilyr Rowlands, Strategic Director	Estyn
Jassa Scott, Assistant Director	Estyn

10 October 2013

Denise Inger, Chief Executive,
Director

Debbie Thomas, Chair

Gary Williams, Director

Kate Shoesmith, Head of Policy
and Public Affairs

24 October 2013

Huw Lewis AM

SNAP Cymru

Third Sector Additional Needs Alliance

New Directions Education

Recruitment and Employment
Confederation

Minister for Education and Skills, Welsh
Assembly

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at

www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=7539

<i>Organisation</i>	<i>Reference</i>
National Union of Teachers Cymru	EB 01
Catholic Education Service	EB 02
Governors Wales	EB 03
Recruitment and Employment Confederation (REC)	EB 04
Undeb Cenedlaethol Athrawon Cymru (UCAC)	EB 05
Estyn	EB 06
Children's Commissioner for Wales	EB 07
British Dyslexia Association	EB 08
The Aspect Group of Prospect	EB 09
Diverse Cymru	EB 10
Association of Teachers and Lecturers Cymru (ATL Cymru)	EB 11
UNISON Cymru Wales	EB 12
Care Council for Wales	EB 13
NASUWT	EB 14
University and College Union Wales (UCU Wales)	EB 15
General Teaching Council for Wales	EB 16
Afasic Cymru	EB 17
National Autistic Society Cymru (NAS Cymru)	EB 18
National Training Federation for Wales	EB 19
Carmarthenshire Educational and Child Psychology Service	EB 20
Barnardo's Cymru	EB 21
The National Deaf Children's Society and RNIB Cymru	EB 22
Association of National Specialist Colleges	EB 23
General Teaching Council for Scotland	EB 24
NAHT Cymru	EB 25
Welsh Local Government Association	EB 26
ColegauCymru	EB 27
SNAP Cymru	EB 28
Focus Group 1	EB 29
Focus Group 2	EB 30
GMB	EB 31
New Directions Education	EB 32