

School Standards and Organisation (Wales) Bill

UCAC's Response

June 2012

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The National Union of Welsh Teachers (UCAC) welcomes the opportunity to respond to this consultation on the School Standards and Organisation Bill. UCAC represents 5,000 teachers, headteachers and lecturers in all education sectors in Wales.

1. Is a Bill necessary to provide for the standards and organisation of schools? Explain your answer.

1.1 We agree that only a Bill can bring all the relevant legislation together in one place to create a holistic and coherent document that is easy to use.

1.2 Also, we believe that the areas in which the Bill legislates anew are entirely appropriate areas for legislation; the statutory power that will be granted to those sections is valuable.

2. Do you believe that the Bill, as drafted, achieves the objectives noted as stated in the Explanatory Memorandum? Explain your answer.

2.1 We are of the opinion that the Bill accords closely with the objectives noted in the Explanatory Memorandum.

2.2 Some aspects are subject to Regulations that will be formulated in due course; their exact wording will be central to the work of achieving the objectives and we look forward to the opportunity to respond to a consultation on those Regulations when the time comes.

3. What is your opinion on each of the main sections of the Bill?

Part 2 – Standards

Chapter 1: Intervention in the Affairs of Running Maintained Schools

Chapter 2: Intervention in Local Authorities

3.1 UCAC accepts in principle the intent of these chapters; if a school is causing concern, it is better to have early intervention of good quality in order to tackle the problem.

3.2 We agree that the Local Authority should be intervening first, and that it is only if this intervention does not succeed that Welsh Ministers become involved in the situation.

3.3 However, we feel that the statement in paragraph 3.15 of the Explanatory Memorandum is slightly overconfident: "The clarification, strengthening and reform of the current provisions through this legislation will raise school standards."

3.4 We feel that some of the clauses are too open-ended in the power they give to Local Authorities or Ministers. There are other clauses that have not been adequately explained in the Explanatory Memorandum.

3.5 We must declare our wholehearted objection to one matter, namely the 'Power of Welsh Ministers to direct that a school is to close' – without going through the usual statutory processes. We detail our reasons below.

3.6 We believe that this chapter would be stronger if it included a clause/clauses on providing relevant and timely information to stakeholders such as parents, staff and trade unions, regarding the school's situation.

Chapter 3: School Improvement Guidelines

3.7 This section (and the corresponding sections in the Explanatory Memorandum) leaves many questions unanswered. The lack of clarity causes concern.

Part 3 – School Organisation

Chapter 1: The Code for School Organisation

We agree with the provisions of this chapter.

Chapter 2: School Organisation Proposals

We welcome the intention of this chapter to make school organisation processes clearer, more transparent and consistent, and to ensure that most decisions are made at a local level. Again, some elements are not adequately explained in the Explanatory Memorandum and their intention is not entirely clear.

Chapter 3: Rationalisation of School Places

There are elements of this chapter that we cannot approve, such as the lack of detail regarding the local inquiries, and the clauses that allow Ministers to decide on proposals that are objected to without referring them to local inquiries.

Chapter 4: Regional Provision for Special Educational Needs

We have no objections to these provisions.

Chapter 5: Proposals to Restructure Sixth Form Education

We have a general concern about this chapter. It does not make sense to create different systems for deciding secondary education organisation proposals on the one hand, and proposals for the organisation of sixth form classes in schools on the other, as the two are so interdependent. We are of the opinion that the Bill extends the power of the Ministers in this context, and we object to that.

Part 4 – Welsh in Education Strategic Plans

We very strongly agree with the intention of this section, and fully support the provisions. However, we would like to see the regulations coming into force earlier in order to support the effort to achieve the 2015 targets of the Welsh Medium Education Strategy.

Part 5 –Miscellaneous School Functions

We have no objections to these provisions.

4. What are the possible obstacles to implementing the provisions of the Bill (if there are any) and does the Bill consider them?

Adequate capacity to support schools in a constructive and specialist way is our main concern in terms of possible obstacles to implementing the provisions of the Bill. This matter is not considered in the Bill itself.

5. Are there any other comments you would like to make about specific parts of the Bill?

Part 1 – Introduction

1(3): There is an error in the Welsh version: there is a need to add '2' after 'Ran'

Part 2 – Standards

Part 1: Intervention in the Affairs of Running Maintained Schools

UCAC accepts in principle the intention of this section; if a school is causing concern, it is better to have early intervention of good quality in order to tackle the problem. However, we feel that the statement in paragraph 3.15 of the Explanatory Memorandum is slightly overconfident: "The clarification, strengthening and reform of the current provisions through this legislation will raise school standards."

We must declare our wholehearted objection to one matter, namely the 'Power of Welsh Ministers to direct that a school is to close' – without going through the usual statutory processes. We detail our reasons below.

Also, we have a number of specific points and questions to raise.

In general, we believe that this chapter would be stronger if it included a clause/clauses on providing relevant and timely information to stakeholders such as parents, staff and trade unions, regarding the school's situation.

2 – GROUND 2: the Explanatory Memorandum explains that the words 'that prejudice, or are likely to prejudice performance standards' have been removed from the original wording. We feel strongly that the clause would be stronger if these words were retained. The version proposed in the Bill is dangerously open-ended in UCAC's opinion; all kinds of failures can occur in the way a school is managed or governed – from matters with no major implications, to truly serious matters. The clause as it currently stands does not set down any kind of threshold in terms of the level of seriousness that would trigger intervention in the school. We feel that there is a very strong basis for

early intervention, even if the clause regarding prejudice to performance standards is included (which is a very reasonable threshold for intervention) – especially as it states ‘or is likely to prejudice ...’ – i.e. there is no need to wait until the standards start to fall before intervening, it is enough that there is a danger of that happening. Re-adding the clause would ensure that a Local Authority can justify and defend its decision to intervene.

4(5): We do not understand the purpose of this paragraph, and see no explanation of it in the Explanatory Memorandum. Ten days is not a long time, and we wish to ask under what circumstances and for what reasons it would be necessary to shorten the period. We do not necessarily object, but rather seek an explanation before being able to form an opinion.

4(9): We feel that this paragraph gives Local Authorities power that is too open-ended. We understand, as the situation develops, that a Local Authority could be keen to take steps not mentioned in the warning notice. However, we feel that giving free rein to take any steps at all is a bridge too far and that there is a need to limit this power in some way.

6(2): We ask whether there should be some kind of limit on the number of governors a Local Authority can appoint. The restriction could be expressed as a percentage of the current number. It could be argued that, if the Authority wanted to appoint more than 50% of governors, it would be better to move straight to paragraph 7.

6(5) and 6(6): We have a question here too. Is the decision regarding how long it will last made at the beginning of the period, or as the period proceeds? We are of the opinion that it would be better to insist that the Authority lays down a specific period for these governors, and that it is possible to renew or extend the period as necessary. Operating in this way would give everyone clearer expectations from the outset, and yet it would not restrict the Authority’s power if the situation had not improved at the end of the first period. Consideration could be given to setting down the period in the warning notice.

6(7): We feel strongly that governors appointed by the Local Authority should receive no remuneration or allowance that an ordinary governor would not be eligible to receive. Any difference in the terms would create real obstacles to the process of constructive collaboration.

9(2): This paragraph is very open-ended, especially 9(2)(b), which allows Local Authorities to take “any other action” without restriction. We are concerned about the possible use of such a broad power.

11(4): Spelling mistake in the Welsh version – instead of ‘gedu’, it should be ‘gredu’.

11(6): As 4(5) above.

11(10): As 4(9) above.

13(2): As 6(2) above.

13(5) and 13(6): As 6(5) and 6(6) above.

13(7): As 6(7) above.

15: We feel that something is missing from this section, namely any kind of consultation with the school(s) with which the school causing concern is directed to federalise. Federalisation can change the working conditions of staff, especially the Head, very substantially. Also, it can change the nature and character of the school in many ways. Is there any right in the Bill for a school to refuse to federalise with a school causing concern? We see no reference to such a right or to any consultation process, and this causes concern.

16: We oppose this section in its entirety on the basis that the actions outlined in it are unreasonably extreme. We have not been persuaded by the logic in the Explanatory Memorandum or the recent statements by the Minister, that there is justification for closing a school that causes concern.

Defective processes or performance are likely to be at the root of serious problems in a school, and there are purposeful procedures for tackling them in respect of processes or specific individuals. Indeed, many of those procedures are included in this Bill; there are also performance management systems, discipline and skills policies for staff, training for governors etc. If the Bill foresees that these procedures will not be adequate, and that the only answer is to close the school completely, this suggests that the basis for such a decision is that all the staff and governors (or at least the vast majority of them) are unable to carry out their work. Is this a credible scenario, and one upon which it is wise to legislate? We do not believe so.

We further oppose the proposal to enable Ministers to direct a school to be closed without following the usual statutory processes of submitting proposals and consulting on them within a specific timetable.

The practical implications of closing a school completely and suddenly must be borne in mind. To what school(s) would the pupils go? Are there enough empty places in the nearby school or schools? Do they provide education in the language medium desired? What will be the travelling distance from the homes of the pupils to the new school? What would happen to the building? Or, is the intention to make every member of staff and governor redundant, and then re-open the school with new staff and governors?

In short, we do not believe that this section meets the aim of the Bill to raise school standards.

17(2): As 9(2) above.

Schedule 1; 9: For the sake of fairness, transparency and accountability, we feel that members of an interim executive should not receive any remuneration or allowance that an ordinary governor would not be eligible to receive.

Schedule 1; 14: We are strongly of the opinion that an interim executive should not have the right to recommend closure of a school. We have detailed our viewpoint that standards are not an adequate reason for closing a school in discussing paragraph 16 above. In addition to those reasons, we draw attention to the fact that the school community has not selected the members of the interim executive, and we therefore do not feel that they are in the best position to decide on such a serious matter.

Chapter 2: Intervention in Local Authorities

21 – GROUND 1 and GROUND 3: Is there a definition in the Bill, or anywhere else, of ‘education function’?

22(1): error in the Welsh version; there is a need to change ‘to’ to ‘i’

23(7): As 4(9) above.

27(1): We do not feel that the word ‘hwylus’ is an appropriate translation of ‘*expedient*’ in this context; it does not convey the seriousness of the situation, and the word suggests that it is a matter of convenience that is in question.

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

27(2): Neither the meaning or intent of this clause is at all clear; nor do we see an explanation in the Explanatory Memorandum. We cannot form an opinion until a further explanation is given, but in the meantime, it is a cause for concern.

28(2): As 9(2) above.

Chapter 3: School Improvement Guidelines

33: This section (and corresponding sections in the Explanatory Memorandum) leaves a great many questions unanswered, and we are of the opinion that it is not clear enough as it is. It is not clear whether specific sets of guidelines will be drawn up for specific schools, or whether general guidelines are being addressed here. Is it the Education Department of the Welsh Government that will provide these guidelines (we understand that the School Standards Unit will operate for a short period only, and we know that it has a small number of staff)? We know that it is not the business of the Bill itself to secure adequate capacity to realise its provisions. However, we consider it fair to ask the question: is the expertise and capacity available in the Education Department to provide individual guidelines for schools – if that is the intention? Also, is the expertise and capacity available in the Local Authorities and the Regional Consortia to support the schools in their efforts to try to improve?

Will there be any consultation with stakeholders before publication of the guidelines in September 2012?

If these are ‘good practice’ guidelines – is it appropriate for them to have statutory power? Usually, good practice is something to be trialled to see whether or not it works in a specific context – not something compulsory. Also, good practice is something that tends to change over time. Will the guidelines be flexible enough to be an effective tool in trying to raise standards in schools?

The Regulatory Impact Assessment in the Explanatory Memorandum raises concern that these guidelines, and the statutory power that it is proposed they will be granted, will be used in a heavy-handed way to force specific practices on schools.

Part 3 – Schools Organisation

Chapter 1: The Code for Schools Organisation

We agree with the provisions of this chapter.

39(1): We would feel more comfortable if there was a clearer definition of the persons Welsh Ministers must consult regarding the code, even if the definition were to appear in the Explanatory Memorandum. The code is going to be an exceptionally important document, and the input of stakeholders will be crucial in its formulation; we would like to have confirmation that teachers' unions will be on the list of consultees.

Chapter 2: Schools Organisation Proposals

We welcome the intention of this chapter to make schools organisation clearer, more transparent and consistent, and to ensure that most decisions are made at local level.

40(6): As we object to paragraph 16, we cannot accept this clause.

41(2): What is the definition of 'any person'? Does this include a private company? Could this open the door to 'free schools' as in England?

45(5) a 45(6): Do these clauses grant permission to establish new foundation schools (through change of category) although the establishment of new foundation schools in Wales is prohibited under the provisions of the Education (Wales) Measure 2011?

47(3): Spelling mistake in the Welsh version – change 'ydys' to 'ydyw'

52(1)(a): In Welsh, the word 'gwrthwynebwr' is used in this clause, whilst the word 'gwrthwynebydd' is used in other clauses e.g. 53(1)(a). We would prefer the word 'gwrthwynebydd' as it is less gender-specific, but one way or the other, consistency is required.

52(4)(c): There is an error in the Welsh version; the word 'gynigion' should be changed to 'wrthwynebiadau'.

53: Although the Explanatory Memorandum makes reference to 'five persons who will either be members of the local authority...or independent lay persons', we see no reference in the Bill to the exact constitution of the Local Determination Panel apart from what is included in Schedule 3, paragraph 2. What kind of lay people would these be? Will this be a standing panel or will a new panel be appointed every time a decision needs to be made?

It is fair to note that, although we fully support the attempt to determine more proposals locally, we have some doubts regarding the impartiality of such a panel, especially in terms of local people's perception of the panel's impartiality.

53(1)(a): There is an error in the Welsh version of the Explanatory Memorandum in respect of this clause, on page 112 – it states that “at least 2 category 2 objectors” are needed to be referred to a Local Determination Panel – while the English version and the Bill itself refers to 1 objector.

53(2)(b): The meaning of this clause is not completely clear, and this is a matter of concern. Does the clause refer to some kind of petition i.e. a single document signed by a number of people? Alternatively, does it refer to a number of separate documents that include the same text – i.e. an organised campaign providing ready-made letters for people to sign? Either way, we would strongly oppose the proposal to consider these documents as an objection by one single category 3 objector. There are many people who are not confident enough to draw up their own letters but who are keen to express objections, and doing so by signing a petition or sending a letter prepared on their behalf is entirely acceptable. We argue that each of these should count as a separate objection. As the groups of people that come under category 3 are defined in great detail, we are of the opinion that there is already ample protection in the proposed system, without imposing too many limitations in this undemocratic way.

54: This section is genuinely difficult to follow and understand, and the Explanatory Memorandum is of no help. Part of the problem is the reference (for the first time) to proposals A, B, C and D. We strongly suggest that it would be wise to have an explanation in the Explanatory Memorandum of the meaning of paragraphs (b) throughout the section, and the logic behind them.

56(4): The Explanatory Memorandum offers no logic for this paragraph. The timetables are set down very clearly and carefully in the Bill. Therefore, under what circumstances and for what reasons would there be a need to “bring the action forward by a period of up to 13 weeks”? Other provisions in the Bill allow a school to be closed quickly if it has fewer than 10 pupils – so, what are the other circumstances that could lead to shortening the timetable by 13 weeks?

Chapter 3: Rationalisation of School Places

60(1)(b)(i): It is not clear, if proposals *have been published in accordance with the order*, why intervention would be needed from Welsh Ministers. The clause would make sense if the proposals had not been published, or they were inadequate in some way – but it is difficult to understand the logic otherwise. Once again, a further explanation would be useful.

62: Once again, we feel that this paragraph is not clear enough, and the Explanatory Memorandum does not offer the necessary clarity either. The greatest vacuum is: who conducts the local inquiry and how (timetable etc.)?

62(7): This clause appears to be a huge loophole and we have found no explanation or justification for it. If we have understood correctly, according to the present system, if Ministers had formulated proposals to rationalise school places, and there were objections to the proposals, the matter would need to be referred to a local inquiry; however, this clause states that the Ministers have the right not to refer the matter to a local inquiry if they “form the opinion that any proposals should be implemented.” That is, it would be possible to disregard the objections and not give them any consideration at local level. If there are provisions regarding local inquiries, we believe that they should be relevant in all cases.

62(9): Does this clause not contradict clause 62(4)? If not, then perhaps more of an explanation may be needed in the Memorandum to make the difference completely clear.

63(2): We disagree with this provision; we believe that any proposals by Ministers, if there are objections to them, should be subject to a local inquiry – regardless of whether they are “original” proposals or “further proposals” after being through one local inquiry.

Chapter 4: Regional Provision for Special Educational Needs

69(1)(b)(i): As 60(1)(b)(i) above.

Chapter 5: Proposals to Restructure Sixth Form Education

We have a general concern about this chapter. We know that Welsh Ministers already have powers under Section 113A of the Learning and Skills Act 2000 to restructure sixth form education.

However, where that Act grants Ministers power to make an ‘*alteration*’ to any secondary school in a local authority in respect of post-compulsory education, they cannot implement ‘*discontinuance*’ except in respect of a school that provides for pupils between the ages of 16 and 19 *only*.

In contrast to this, the Bill, in Schedule 2, Part 2, paragraph 6(2), grants power to Welsh Ministers: “To terminate the provision of full-time education that is appropriate to the requirements of pupils over compulsory school age in a school that is to continue to provide full-time education that is appropriate to the requirements of pupils of compulsory school age.”

This is therefore a new power, and one that we oppose. We know that Welsh Ministers have powers over the organisation of post-16 education, and that the funding systems are separate from the funding systems for the compulsory ages. However, strong arguments were made as a result of this Bill regarding the importance of making as many decisions as possible regarding schools’ organisation at local level, and we feel that those arguments are equally strong and appropriate in terms of sixth form education. It must be borne in mind that, although the funding streams are separate, the sixth form is a central and integral part of a very large number of secondary schools, and that Local Authorities have responsibility for them. It could be argued that here is a perfect example of the kind of collaboration the Minister is very keen to see, in terms of creating units that are larger and therefore more effective and viable.

It makes no sense to create different systems for secondary schools’ organisation on the one hand, and sixth forms in schools on the other, as both are so interdependent. They exist in the same communities for the same pupils and within the same institutions.

74(3): There is a mistake in the Welsh version; the word ‘*amodau*’ needs to be deleted, and the word ‘*addasiadau*’ needs to be added in its place. Also, we would like more details and assurances regarding the persons that need to be consulted on this matter.

Part 4 – Welsh in Education Strategic Plans

We agree very strongly with the intent of this section, and we fully support the provisions.

We note that the Explanatory Memorandum refers to regulations that will come into force in December 2013, making it necessary for Local Authorities to submit Strategic Plans to be implemented from 1 April 2014. We feel that this timetable is slow (especially compared to the timetable for other regulations in this Bill), and it raises the question of how effective these provisions will be as the Government and Local Authorities attempt to achieve the targets of the Welsh Medium Education Strategy by 2015.

85(3): We feel that the emphasis is different in the Welsh and English versions due to the use of the word 'angenrheidiol' to correspond with 'necessary'. We feel that 'angenrheidiol' places the bar considerably higher than 'necessary', and makes it less likely that amendments will be made.

85(4)(f): We would like more details and assurance regarding the 'other prescribed persons' who must be consulted on this matter.

Part 5 –Miscellaneous School Functions

89(2)(b): It would be useful to have a further explanation regarding the definition of 'unreasonable', and what circumstances are foreseen that could lead to such a situation.

97: We do not object to this provision; it appears sensible to remove the provision for a code of practice published by the Secretary of State in the context of this Bill. However, we see no information in the Explanatory Memorandum that expands upon this clause, and we believe that it is important to explain the side-effects of removing such a provision.