



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

School Standards and Organisation (Wales) Bill

White Paper

Overview This White Paper sets out the Welsh Government's legislative proposals in relation to schools in the following policy areas: Intervention for schools causing concern; school improvement guidance; school organisation; Welsh in Education Strategic Plans; annual parents meetings; post-16 learners with special educational needs (SEN) in schools; free school breakfasts; school-based counselling; flexible charging for school meals.

How to respond Please use the questionnaire on our webpage at <http://wales.gov.uk/consultations/education/schoolstandardsbill/?lang=en> for your responses.

Alternatively you can send your responses to the address below.

Responses are required by 5 January 2012.

Further information and related documents Large print, Braille and alternative language versions of this document are available on request. Please telephone us on 02920 821522 or e-mail EducationWalesBill2012@wales.gsi.gov.uk to request your copy.

Contact details For further information contact:
Anthony Cody,
Deputy Project Manager
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

email: EducationWalesBill2012@wales.gsi.gov.uk

Tel: 02920 821522

Data protection How the views and information you give us will be used
Any response you send us will be seen in full by Welsh Government officials dealing with the issues which this consultation is about. It may also be seen by other Welsh Government officials to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with

the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

Ministerial Foreword	1
Summary	3
Our proposals	5
1. Intervention for schools causing concern	5
2. School improvement	8
3. School organisation	10
4. Welsh in Education Strategic Plans	18
5. Reducing bureaucracy	21
5.1 Annual parents meetings	21
5.2 Post-16 learners with special educational needs (SEN) in schools	23
5.3 Primary school free breakfast initiative	25
5.4 School-based counselling	28
5.5 Flexible charging for school meals	29
Annex: Current regulations and guidance relating to school organisation	31

Ministerial Foreword



On 12 July 2011, the First Minister announced the Welsh Government's Legislative Programme for 2011-2016. That announcement reflected the importance we placed on education in our manifesto by including proposals for two Education Bills. This White Paper lays out my proposals for the first of those Bills.

Education does more than shape the life chances of individuals or achieve economic success. Education is also fundamental to building a just, inclusive and fair society. In our manifesto, we set out a direction for the education system which as Minister I am proud to be taking forward. Making sure that our schools deliver high quality education that is world class is fundamental to securing the future prosperity of Wales and to giving our young people the very best chances in life.

Since taking office I have been honest where I have seen failings in the way our educational services have been working. While outcomes such as examination results have steadily risen since education was devolved, the pace of improvement lags behind that of other countries. The variation in performance across the education system is far too great – world class provision in many of our schools sits alongside poor practice in neighbouring schools and too many local authorities are judged adequate or having serious weaknesses. In addition there is too much complexity in Welsh education and far too much resource does not reach the frontline.

It is apparent that standards need to rise across the board. I have acknowledged that the problems are for all of us – politicians, civil servants, local government, teachers and governors – to resolve. And I have pledged in the strongest terms to deliver the improvements that our children and young people deserve.

Clearly the root and branch improvements of the type I expect to see will take time. We began those improvements in the last Government and I expect to see continual progress made during the term of this Government to implement all our manifesto commitments.

We have a clear mandate to drive forward our proposals and to make change happen. Where that change requires a legislative basis to underpin it, I want to make those changes so that improvements are made as soon as possible. The Education (Wales) Measure 2010 strengthened the role of governors, promoted collaboration and pledged our commitment to the comprehensive system by preventing the formation of more foundation schools. The School Standards and Organisation (Wales) Bill is the next step in enhancing education in Wales. The proposals set out here aim to:

- Sharpen the accountability of schools by bringing together, updating and, where necessary, tightening standards and management.

- Reduce complexity and deliver stronger schools through reforming the statutory process for school organisation, enhancing local determination and streamlining decision making for local authorities' school organisation processes.
- Reduce administrative burdens by mainstreaming several grant funded programmes.
- Reform the requirement for school governing bodies to hold an annual parents meeting.
- Concentrate the minds of education professionals at all levels in the system on the implementation of policy and delegate decision making to the local level wherever possible.
- Finally, Wales is a bilingual country, and education plays a key role in nurturing the Welsh language. However, to date, local authorities have not been accountable on a statutory basis to the Welsh Government for planning Welsh-medium provision. Therefore I intend to place Welsh in Education Strategic Plans on a statutory basis.

There are areas of the school system of which we can be rightly proud and we will build upon these strengths. But where weaknesses are identified, we must tackle them. Over the term of the next Welsh Government I intend to do that.

Proposals set out in this White Paper reflect guiding principles by providing a practical, common-sense approach to better governance. It is a way forward designed to meet the needs and aspirations of the people in Wales. Our objective is to build a Wales that is economically competitive based upon an education system that is world class. As such, I welcome the opportunity provided by this White Paper to set out the proposals for the School Standards and Organisation (Wales) Bill before it is introduced into the National Assembly for Wales next year.

I invite and welcome your input.



Leighton Andrews AM
Minister for Education and Skills

Summary

What is this White Paper about?

On 12 July 2011, the First Minister made a statement on the Legislative Programme for the Welsh Government. This statement contained proposals for two Education Bills:

- School Standards and Organisation (Wales) Bill.
- The Education Structures, Governance and Special Educational Needs (Wales) Bill.

This White Paper sets out the proposed content for the first of these Bills, the School Standards and Organisation (Wales) Bill. The Welsh Government considers that it is important that everyone has an opportunity to view and comment upon these proposals before legislation is introduced.

The proposals

We ask learners to do their best and to strive to achieve. It is therefore only right that we should expect the same from our school system. However, it has become increasingly clear that this has not always been the case. Quite often our school system is falling far short of excellence. If we are to deliver a world class system of education for current and future generations, there will need to be improvements.

Wales is fortunate to have many excellent schools, teachers and school leaders but the evidence shows us that this is not the case in each and every school. If we are to achieve excellence for all schools then there must be change. We must change fast and we must be willing to make change happen.

In order to achieve this we need to focus on building capacity within the system itself. We recognise that one size does not fit all and therefore we are fully engaged in a programme of reform that will lead to higher standards and aspirations in each and every classroom in Wales.

To achieve higher standards we will require sharper accountability, more transparency and a relentless focus on improving our performance. We need local authorities to meet their duties effectively and efficiently and to redirect resources to the front line. The measures set out here bring together current legislation on school standards and set out proposals to strengthen powers of intervention to raise school performance.

Where appropriate we can identify, harness and build on the excellence already in place. Where better and more efficient ways of working can be identified, they should be acted upon.

This School Standards and Organisation (Wales) Bill will include a number of areas where the Welsh Government seeks immediate improvement and will be the first stages in a package of education reforms over the term of this Government.

The School Effectiveness Framework has been an important driver for change. However we now need to increase our focus on delivery and both sharpen and streamline the way we deliver education in Wales. In this way we can move to a precise and practical programme of school effectiveness and improvement. If we are to improve performance across the whole system then we must develop and create a culture of continuous learning from the bottom up.

Each school will be expected to reach minimum standards defined by the Welsh Government. We are implementing a system of banding of schools to better monitor their performance and to direct their resources accordingly. Where a school becomes a cause for concern, there will be greater powers of intervention for local authorities.

The Welsh Government will put in place guidance to drive up school improvement. We will work closely with partners such as Estyn and local authorities to identify the materials and resources, teaching strategies and leadership approaches that are proving the most effective and have a sound evidence base.

The Bill sets out several measures to reduce complexity and administrative costs in education. This Bill will change the way in which school organisation decisions are made, modernising the planning and provision of schools and school places. Measures are to be included to allow better provision of the number, size and types of school, so that school places match demand in the local area in both the English and Welsh medium sectors. Decision making for school organisation will be primarily a local function. Provisions will also be included which will look at rationalising certain grants to local authorities. Streamlining the payment of these grants into the Revenue Support Grant will provide more efficient delivery and accountability in these areas. Provision will also be included to reform the duty on school governing bodies to hold an annual parents meeting.

Finally, the Bill will strengthen the legislative position of the Welsh language by placing the provision of Welsh in Education Strategic Plans on a statutory basis, ensuring that Welsh-medium education is at the heart of policy developments and school planning within local authorities.

Details of the current system and why changes are being proposed in each of the areas are provided in the "Our proposals" section below. Should you wish to comment on any of these proposals, you can use the questionnaire on our webpage at <http://wales.gov.uk/consultations/education/schoolstandardsbill/?lang=en> and return it to the address given on page 2.

Our proposals

1. Intervention for schools causing concern

What is the current position?

In his 2 February 2011 speech, 'Teaching Makes a Difference', the Minister for Education and Skills gave a clear indication of his determination to improve standards in our schools. Essential to this is an effective accountability framework together with targeted intervention at the right time and in the right way.

The need for intervention in schools causing concern is currently identified in two ways:

- by local authorities as part of their responsibilities for supporting and challenging their schools performance;
- or, through the Estyn inspection process.

The power of a local authority to intervene in schools causing concern is set out in Chapter 4 of Part 1 of the School Standards and Framework Act 1998 ("the SSFA"). Under section 15 of the SSFA, a local authority can issue a warning notice to a governing body with a time limit for action. The criteria for issuing warning notices are that the authority is satisfied that:

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

If the governing body fails to comply with the warning notice the local authority has the option of appointing additional governors to the school governing body. If that step fails to show an improvement, the local authority can apply to the Welsh Ministers to put an Interim Executive Board (IEB) in place and replace the governing body. An IEB replaces the governors on the schools current governing body, and the IEB members are appointed solely by the local authority. Alternatively, if the situation at a school is severe the local authority may apply straight to the Minister for an IEB without appointing additional governors.

We also consider that local authorities should be making better use of the information they have in relation to the performance of schools in their area to

ensure that schools and governing bodies are suitably skilled to make effective use of comparative performance information as part of self assessment. Whilst local authorities currently utilise data at a local level to inform decision making about the deployment of support services and to monitor school performance, approaches to the local categorisation of schools have varied between authorities. Prior to the national banding system being implemented during academic year 2011/12 there has been no single comparative approach to considering school performance across Wales.

Why are we proposing a change?

The current law on local authority intervention powers has been on the statute book since 1998 and has been amended on numerous occasions. That legislation also cross-refers to other Acts and so to fully understand the law the reader must read across several other Acts of Parliament. This makes the law difficult to access for those seeking to establish the law in this area.

Whilst guidance has been issued by the Welsh Ministers in the past, that guidance is non statutory. There is no power to issue statutory guidance to Estyn or to schools or to local authorities in relation to inspections of maintained schools. The Code of Practice which covers Welsh Ministers powers to intervene in local authorities is also out of date and largely replaced by other forms of guidance including the 'School/Local Authority Partnership Agreements'.

Current policy puts the onus on local authorities to act in the first instance. However, there is evidence, highlighted in the evaluation by Estyn of the "Impact of Local Authority Intervention and Support for Schools Causing Concern" that this action is not taken by local authorities sufficiently quickly. This also applies to the issue of warning notices, where we believe the current legislation deters local authorities from using their existing powers. We believe this is compounded by the fact that the current advice to local authorities is out of date and in different guidance documents. By re-stating and clarifying the law on the face of the Bill, and by issuing statutory guidance, the Welsh Ministers intend to make the law clearer for local authorities, and so make it easier for them to understand when it would be appropriate for them to use their powers of intervention.

What specific changes are we proposing?

- a. We intend to re-state the law on local authority intervention powers currently contained in the SSFA on the face of the Bill.
- b. We also want to be able to issue statutory guidance that will replace the current 'Schools Causing Concern Guidance'. It is proposed that local authorities will have to comply with the guidance unless they follow a procedure set out in the Bill that would allow them to depart from that guidance. We anticipate that the procedure will require local authorities to publish a document setting out how, and the reasons why they are departing from the guidance. The proposal is to also seek a power to enable the Minister to direct the body to comply if he/she does not agree with their published reasons.

The guidance will cover the expectations in relation to use of comparative data including the national banding outcomes for schools, and schools and local authority 'All Wales Core Data Sets'. Guidance will clarify the relationship between data analysis, self evaluation, target setting and performance management. Guidance will set out the role of the school, governing body and local authority in use of comparative data and actions arising from robust self evaluation. It will make it clear that local authorities are expected to consider banding and other forms of Welsh Government analyses. They will then be expected to take action based on the evidence where schools are identified as underperforming.

We will also set out what we expect local authorities to include in School Development Plans (SDP). At present, there is no requirement to produce a SDP, however, it is our intention to use secondary legislation to make this a requirement. We also intend to issue guidance in relation to the SDP. The intention is that the local authority would be able to request that a school re-visit its plan should the local authority determine that the plan is insufficiently robust.

Explanation: The current Schools Causing Concern Guidance and Code is out of date and the former document is non-statutory. As described, the intention is for local authorities to follow good practice set out in guidance unless they have good reasons to depart from that. The procedure described above will require the local authorities to publish a document setting out why, and the reasons that they are departing from the guidance. The reason for such an approach is that people are often unclear about the appropriate weight that should be given to such guidance and case law does not actually make this clear – this procedure avoids that problem. Those subject to the guidance will have to consider the guidance and if they decide not to comply with it, publish their reasons for not doing so. The proposal also seeks a power to enable the Minister to direct the body to comply if he/she does not agree with their published reasons. The purpose being that the Welsh Ministers need to ensure that there are very good grounds for local authorities departing from guidance. This is particularly important for this guidance as it will describe the process for dealing with all schools causing concern, including those judged to be in need of significant improvement and special measures.

c. We also want to be able to change the current legislation for issuing warning notices to a governing body, to broaden the circumstances in which a warning notice may be issued.

Explanation: Warning notices are issued under specific circumstances set out in current legislation. We consider that the criteria may be dissuading local authorities from issuing warning notices sufficiently early. By amending these criteria we aim to avoid governance and management issues of a school deteriorating until there is a real risk to the performance of the school.

What outcomes do we anticipate?

The aim of clarifying and re-stating the law and enabling Welsh Ministers to issue statutory guidance, is to make clear to a local authority when and how they should use their powers of intervention in relation to schools. It is anticipated this will lead to an increase in interventions in schools causing concern.

2. School improvement

What is the current position?

The Minister for Education and Skills indicated in his 2 February 2011 speech 'Teaching Makes a Difference' that the Welsh Government would issue statutory guidance for school improvement and the Welsh Labour manifesto confirmed this. The guidance would set out the best practice currently available in Wales and elsewhere, which we will expect schools to implement, to ensure that our most effective practice becomes our standard practice.

Why are we proposing a change?

Whilst there is evidence of best practice in Wales with schools achieving excellent outcomes for their learners, there remains significant variability in learner outcomes between classes, between schools, and between local authorities in Wales. Best practice does not spread quickly and some schools are reluctant to change their approaches, even where they are less successful than other settings facing similar socio economic circumstances.

There is considerable work underway to identify and disseminate the most effective practice in Wales. Estyn will be using their inspection processes to identify sector-leading practice and there are many other resources and materials on effective practice available to schools and teachers. The Welsh Government is committed to drawing these together and signposting the most relevant examples to schools and practitioners.

However, there are currently no powers for the Minister to insist that schools adopt effective practice even where evidence suggests that these approaches would improve learner outcomes.

What specific changes are we proposing?

The specific proposals are:

- a. A power to issue statutory school improvement guidance on the functions of local authorities, governing bodies and head teachers. Those subject to the guidance will have to consider the guidance and if they decide not to comply with it, publish their reasons for not doing so.
- b. A power to enable the Welsh Ministers to direct the body to comply if he/she does not agree with their published reasons.

Explanation: Our intention is to take powers to issue statutory guidance on the teaching tools, techniques and approaches that the Welsh Government wishes schools, certain categories or groups of schools, or certain categories of practitioners in Wales, to adopt to deliver school improvement. Welsh Ministers may also want to prescribe the approach to school improvement that they would like to see local authorities adopt to drive up school standards and encourage school improvement in their area. This could include, for example, specifying resources to support more

effective literacy or numeracy development, or describing effective techniques to improve teaching and learning, such as professional learning communities.

What outcomes do we anticipate?

The aim is to enable Welsh Ministers to issue statutory guidance which would improve the effectiveness of some schools in need of additional support, whilst enabling those demonstrating leading edge practices to continue to develop and innovate – and for their practice to be used to support the performance of the wider system in Wales.

3. School organisation

What is the current position?

Local authorities, the governing bodies of voluntary and foundation schools and other promoters have powers to make proposals to: establish, significantly alter, change the category of, and close schools. The powers apply to mainstream and special schools funded by a local authority. Regulations and guidance documents specify how these powers are to be used.

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

The Welsh Ministers also have powers to bring forward proposals to establish, alter or discontinue post-16 education in schools.

Current process for making changes to school organisation

The following are the main steps in the process of making proposals:

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

Welsh Ministers have reserve powers to direct local authorities and others to bring forward proposals for school reorganisation where there is an excess or under

supply of school places. There are also powers for Welsh Ministers to bring forward proposals. These powers have not been exercised to date.

Why are we proposing a change?

We consider that because responsibility for planning and providing school places rests with local authorities rather than with the Welsh Government, decisions should, in the vast majority of cases, be made at the local level rather than by Ministers.

We also consider that the current process for school organisation takes too long and potentially delays the efforts of local authorities seeking to make changes which will lead to a better use of the resources available for education. The involvement of the Welsh Ministers in every proposal which receives objections adds an unnecessary level of bureaucracy and can sometimes result in significant delay. The most complex cases can take many months to determine. Limited changes which shorten the timetable for the lodging and submission of objections by 6 weeks (made through the amendment of existing regulations on procedures) came into effect in March 2011. However, a greater reduction in timescales is considered necessary.

We believe that the current legislation, which allows a single objector without a direct interest in a school to cause a referral to Welsh Ministers, is inappropriate. This provision can result in delays and uncertainty for local parents and children directly involved with a school who support the proposed change, and this is clearly undesirable.

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

Whilst many local authorities engage well with stakeholders and explain their intentions clearly when they consult on proposals, we consider that the current statutory guidance lacks sufficient detail to ensure that there is consistency in the approach taken to consultation. Furthermore, both proposers and interested parties sometimes tell us that they are unclear about what constitutes good practice and what local people can reasonably expect from consultation. We believe that a Code with which promoters would have to comply, and which includes a set of minimum consultation requirements, would help to bring clarity to, and promote confidence in, the process.

Finally, there are currently four sets of regulations and three guidance circulars relating to school organisation, in addition to the primary legislation – these are listed in the Annex. Having multiple documents relating to school organisation may inhibit clarity and understanding.

What specific changes are we proposing?

The specific changes proposed are as follows.

a. Local authorities, governing bodies and other promoters will continue to be required to publish proposals to establish, discontinue, change the category of, or significantly alter schools. We intend that the list of alterations which require publication will largely replicate that currently set out in regulations with the following exceptions:

- added to the list of significant alterations will be the reduction in the physical capacity of a mainstream school, except where the proposed capacity of the reduced school will be greater than the highest number of pupils on roll at the school at any time in the previous two school years. In this context, "capacity" is determined in accordance with the formulae set out by the Welsh Ministers. We propose that in the case of local authorities, the power to make such a proposal will include both community and foundation schools.

Explanation: Currently local authorities are only able to publish proposals to increase the size of community and foundation schools. At a time when pupil numbers continue to fall, we believe that enabling them to also propose decreases in physical capacity could be a useful means for them to balance supply and demand in situations where a redistribution of pupils is desirable.

We intend to simplify provision around the transfer of schools between sites (including special schools), so that any transfers of less than 1 mile would be permitted without a proposal, but that all transfers over that distance would require full statutory procedures as is the case now.

Explanation: Currently, the requirement to publish proposals in relation to the transfer of schools to new sites includes references to the size and condition of buildings, and the use of school playing fields. It is unnecessarily complex and poorly understood. We believe that the proposed simplification will provide some flexibility in relation to the location of schools whilst at the same time protecting the interests of pupils and parents.

We also intend that provision will be made for Welsh Ministers to amend the list of alterations as necessary to add new, delete or amend specified alterations.

b. We intend that the information to be included in published proposals and the manner of their publication will largely replicate that which is currently required. As is currently the case, anyone wishing to make an objection to a school organisation proposal would have opportunity to do so. To be considered as statutory objections, objections would have to be made in writing and sent to the proposer within one calendar month of the date on which the proposal was published ("the objection period").

c. We propose that that the following specific categories of statutory objector will be identified:

- i. Any local authority in Wales.
- ii. Any diocesan authority in Wales (or other religious body with which school with designated religious character is identified in the relevant Order).
- iii. Any Further Education Institution (FEI) in Wales (in the case of proposals for secondary school reorganisation).
- iv. Assembly Members (AM) representing the constituency or region in which a school named in the proposals is situated.
- v. Members of Parliament (MP) representing the constituency in which a school named in the proposals is situated.
- vi. Governing bodies of schools named in statutory notices.
- vii. School Councils of schools named in statutory notices.
- viii. Local councillors.
- ix. Staff of schools named in statutory notices.
- x. Children and young people attending, or who might reasonably wish to attend, schools named in statutory notices.
- xi. Parents of the above.
- xii. Community and town councils for the area/s of schools named in proposals.
- xiii. Any other school governing body.

Where parties (i) or (ii) make an objection, we intend that proposals would be determined by Welsh Ministers.

If objections are lodged by any one of parties iii to vii (FEI, MP or AM, governing body of school subject to the proposal or school council) or by a total of 10 representatives from any of the 6 latter categories (vii to xiii), we intend that the proposals will be referred to a local decision making panel (see f below).

We intend that if fewer than 10 in the latter six categories object, or if there are only objections from persons outside the specified categories, or if there are no objections, then the proposer may determine the proposal. Where statutory objections are not received, the proposers would be able to implement the proposals without any further determination.

Explanation: We believe that the current legislation gives undue weight to individual objectors, even though they might have no direct interest in a proposal. This has the potential to prejudice the interests of those directly involved by impeding the progress of change which has general support. In future those objecting would have to identify their interest whilst doing so and proposers would be able to disregard any objections which did not fit into one of the valid categories of objector. Differing weight would be given to these different categories of objectors, so that if any of the first two objected, Ministerial determination would be necessary. An objection from either a local authority or a diocesan authority would suggest that there were more than local issues at stake, and that outside determination would be appropriate. If an AM, MP or the governing body or school council of the schools affected objected, a

local decision maker (see below for details) would have to determine the proposal. If at least 10 objections were lodged by the remaining specified categories of statutory objectors, a referral to the local decision maker would also be necessary but any level of objection below this threshold would leave the proposer free to determine how to proceed. These arrangements are designed to reflect the impact of proposals in an area by ensuring that decisions are taken at an appropriate level, in accordance with the level of concern expressed by those most involved in school organisation in a locality. Currently all levels of objection require referral to Ministers.

d. We intend that within one calendar month of the end of the objection period, a summary of the statutory objections and the proposer's response to those objections must be published by the proposer:

- i. on the proposer's website (if it has one); and
- ii. on the website of the existing/proposed maintaining local authority, where this differs from (i).

Explanation: We wish to ensure that there is as much transparency in the process as possible and believe that it is important that objectors can clearly see that their objections have been considered by proposers.

e. We intend that the Welsh Ministers will determine all proposals concerning the removal of 6th forms, or the addition of 6th forms, including the closure of sixth form only schools.

Explanation: The Welsh Ministers have statutory responsibilities in relation to post-16 education and the provision of sufficient places, and are directly responsible for funding post 16 education provision. In the light of these responsibilities, we consider it appropriate that the Welsh Ministers exercise a strong element of control over post-16 proposals.

f. We propose that a duty be placed on local authorities to establish a decision making panel – or a joint panel established by two or more local authorities – that is independent of the executive body that decided to publish the proposal and comprises a politically balanced group of local authority members, augmented as appropriate by diocesan authority representatives. This panel will have its own legal identity. It is also intended that provisions be made in relation to the way in which these bodies would be constituted and would operate, including a specified minimum number of members, the disqualification of individuals with a direct interest in the proposals (including local authority executive members), majority voting, the requirement that consideration is made on the basis of written evidence only, and a requirement that a decision is made within four months of the end of the objection period.

Explanation: The local decision making body would decide whether the proposal should be allowed to proceed and inform the proposers, making public the basis for its decision. Such bodies would determine proposals which had led to more than 10 objections or objections from those in categories (iii) to (vii), These would include proposals made by the governing bodies of foundation and voluntary schools, or (in the case of new voluntary schools) other promoters.

This two tier system would provide an extra level of scrutiny at a local level by individuals familiar with local conditions. In relation to proposals which involved a school with a designated religious character, we anticipate that a representative of the relevant diocesan authority would be a member of the decision making committee (except where the diocesan authority is itself the promoter).

g. We propose that once a determination is made, the decision will be final. A determination panel's decision could only be overturned by the Courts where an interested party has successfully applied to the High Court for a judicial review of that decision.

h. Before publishing proposals, we intend that proposers will be required to undertake consultation as prescribed in a statutory Code with which local proposers must act in accordance.

Explanation: The advantages of producing a Code on consultation would be that such a document can provide a clear explanation of how the promoters are to consult which is accessible to both promoters and to the public, facilitating understanding and compliance. Currently promoters have only to "have regard to" statutory guidance on consultation. The introduction of a Code with which promoters must comply would provide more robust means of ensuring that promoters undertake procedures correctly.

i. We propose that where at the January census point, a primary school has fewer than 10 pupils on roll, local authorities/governing bodies may undertake a specified curtailed procedure to bring about official closure which consists solely of the issue of the notice of closure – the requirement for consultation being waived. Objections could be made, but the issue would be determined in all cases by the proposer.

Explanation: A school with fewer than 10 pupils on roll could normally only afford one full time member of teaching staff, placing significant burdens on staff and potentially endangering standards. In such circumstances, where a proposer believes the school has become unviable, we believe that extended procedures which include protracted consultation and any requirement for determination by anyone other than the proposer could have a harmful impact on the education of remaining pupils.

j. We intend that proposals requiring determination by Welsh Ministers or the local decision making panel may be:

- approved,
- rejected, or
- approved with such modifications as are agreed between the decision maker and the promoter.

k. We intend that obligations on promoters to implement proposals will remain but promoters should be given the additional power, following suitable notification to

interested parties, to modify the timing for up to 3 years with good reason, or to notify abandonment of a proposal that has become impossible to implement.

Explanation: Presently it is necessary to seek permission from Welsh Ministers in order to modify timings, and to publish proposals to be relieved of any duty to implement. We consider that the current requirements are burdensome on both the local authority and the Welsh Ministers.

l. We propose that the current prohibition of alterations to the religious character of a school, including the acquisition or removal of a religious character, will remain.

Explanation: In order to have a religious character, schools must have been established with that character. To 'lose' its religious character, a school would need to close and reopen as a school without a religious character. We are of the view that this arrangement should be retained.

m. We intend that existing legislation in relation to the proposed closure of a foundation or voluntary school by its governing body, by serving two years notice will be replicated.

n. We intend that the existing legislative process regarding proposals to change the category of schools be replaced with a process which is in line with the other types of school organisation proposal. This would mean that the Welsh Ministers would no longer be responsible for determining all such proposals. The existing prohibition on a change to the foundation category from any other category would be replicated.

Explanation: Bringing the change of category process into line with the other forms of school reorganisation will provide clarity and ensure consistency.

o. We intend that existing legislation relating to special schools will be replicated. Also proposed for replication is existing legislation relating to the power of the Welsh Ministers to direct local authorities and governing bodies to bring forward proposals to rationalise school places, and provision for Welsh Ministers to bring forward their own proposals for rationalisation, if necessary. Additionally existing legislation in relation to the power of Welsh Ministers to establish or discontinue provision for post 16 learners in schools is to be restated in this Bill.

Explanation: Although the powers of Welsh Ministers to direct or propose rationalisation have not been used, we believe that their retention provides a safeguard in the event that local parties were not willing or able to propose change. Restating in this Bill the powers of the Welsh Ministers in relation to the establishment or discontinuance of post 16 education in schools, will contribute towards the objective of bringing all school organisation legislation together in one place.

p. We intend that provision be made for statutory guidance to be issued to those bringing forward proposals and those determining proposals.

Explanation: Our intention is that new guidance would be produced that would replace the current guidance as to the factors that should be taken into account when developing and determining proposals. This would also provide local authorities and others with examples of good practice and an explanation of process, etc.

q. We propose that existing uncommenced legislation regarding the discontinuance of rural schools be repealed and not restated.

Explanation: The provisions have never been commenced in Wales and do not fit with current government policy that suggests that closures in rural areas should be considered on the same basis as closures elsewhere.

What outcomes do we anticipate?

We expect that these proposals, if implemented, would result in:

- a greater number of locally determined decisions;
- a less time-consuming and more clear-cut system which in turn would stimulate local authorities and others to bring forward a greater number of school organisation proposals;
- fewer proposals requiring determination as a result of objections;
- where proposals do require determination, a process which is much swifter and for the most part conducted at the local authority level, thereby reducing the costs of the process and the uncertainty for those directly affected; and
- a bringing together, in one place, of all substantive law on school organisation in Wales.

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

4. Welsh in Education Strategic Plans

What is the current position?

The Welsh-medium Education Strategy (WMES) and its supporting implementation programme were published by the Welsh Government in April 2010. This key strategic document outlines the national strategic direction for Welsh-medium education. In particular, it sets out the Welsh Government's vision which is:

'to have an education and training system that responds in a planned way to the growing demand for Welsh-medium education, reaches out to and reflects our diverse communities and enables an increase in the number of people of all ages and backgrounds who are fluent in Welsh and able to use the language with their families, in their communities and in the workplace.'

The Strategy acknowledged that, based on the evidence, there was *'a need for strategic planning to facilitate growth and ensure that there is more coherent development and that needs are considered at the start of policy developments in a coordinated way.'*

The Strategy's view was based on the realisation that few local authorities are proactive in their approaches to forecasting and meeting demand for Welsh-medium education. In particular, some local authorities to date have not adopted planning processes that show:

- adequate regular systems for measuring need or demand;
- the means for responding to that need or demand within current school provision and using potential resources;
- current take-up of Welsh-medium education and targets set for growth;
- how to foster Welsh-medium developments in the non-maintained childcare sector and link these with maintained provision;
- adequate methods of supporting linguistic progression and late entry into Welsh-medium provision;
- links with current policy developments such as Foundation Phase and 14-19;
- the means by which all planning and policy mechanisms have due regard to Welsh-medium and Welsh-language issues.

In an attempt to create a method of planning for Welsh-medium education, the Welsh Language Board has been using its powers under the Welsh Language Act 1993 to require local authorities to draw up Welsh Education Schemes. These Schemes concentrate to a great extent on ensuring sufficient places for children whose parents want to choose Welsh-medium education. However, these Schemes have not prompted sufficient change in the context of the Welsh-medium Education Strategy.

The Welsh Language (Wales) Measure 2011 will abolish the Welsh Language Board (by April 2012) and replace it with the Welsh Language Commissioner. As a result, the body responsible for Welsh Education Schemes will no longer exist. The demise of the Welsh Language Board as well as the publication of the Welsh-medium Education Strategy has provided an opportunity to create a more coherent planning system for Welsh-medium education.

In order to introduce this new, improved planning system, there was a need to develop a process which would both capture and take forward the Welsh Government's national strategic direction. After consultation and careful consideration, the Welsh-medium Education Strategy proposed that the main element in this system would be the Welsh in Education Strategic Plans (WESPs) to be prepared by local authorities. The statutory WESPs will, therefore, replace the former statutory Welsh Education Schemes of the Welsh Language Board.

The Welsh-medium Education Strategy made it clear that WESPs would initially be introduced on a non-statutory basis. The trialling of the process on a non-statutory basis during 2011-2013 allows local authorities to establish baseline performance data against national targets of the Welsh-medium Education Strategy. This will assist local authorities to prepare the WESPs once they become statutory.

What specific changes are we proposing?

The specific proposals are:

- a. To require local authorities to prepare and submit Welsh in Education Strategic Plans (WESPs) for approval by the Welsh Government.

Explanation: The main purpose of WESPs will be to ensure that local authorities support the implementation of the Welsh-medium Education Strategy in developing local education policies and in school planning. In particular, they will show whether, and how, local authorities intend to plan for sufficient Welsh-medium places according to local need. They will also enable local authorities to demonstrate progress against the national targets set out in the Welsh-medium Education Strategy. WESPs will be plans which demonstrate progress in annual reports and updates.

We also propose that local authorities will be required to:

- b. Collaborate in the preparation of their WESPs with local learning providers and their governing bodies and parents as well as other neighbouring local authorities;
- c. Publish their WESP to allow for local accountability;
- d. Share the data on performance that will be required by the WESP;
- e. We further propose that the Welsh Government will be able to approve a WESP, or if it is considered unsatisfactory, to reject or modify a WESP, and to

introduce ways for local authorities to be supported in preparing and submitting a revised and improved Plan;

f. These plans will be drawn up according to regulations and statutory guidance.

Explanation: Statutory guidance will provide further detail on the content of WESPs in relation to the expected actions to support progress against the national targets of the WMES.

The regulations will cover:

- details of the duty to collaborate with local partners and other local authorities;
- timing of submission to the Welsh Ministers of annual WESPs;
- details of annual publication of WESPs;
- nature of data to be shared including growth in numbers of pupils being educated through the medium of Welsh, trends in rates of linguistic progression, improvement in standards in Welsh and Welsh Second Language and information on the training of practitioners.

What outcomes do we anticipate?

We expect that these proposals would result in:

- the establishment of an improved local authority planning system for Welsh-medium education. The main result of this will be greater coherence and consistency in the provision of Welsh-medium school places to fulfil projected need or demand in each locality and across regions;
- introduction of WESPs as the main mechanism for taking forward the national strategic direction for Welsh-medium education and provide accountability to Welsh Ministers;
- publication of regular annual data and reports on progress on national targets for Welsh-medium education by local authorities;
- more opportunities for learners to access Welsh-medium education;
- more learners with higher-level skills in Welsh;
- replacement of the system of statutory monitoring by a non-governmental body (the Welsh Language Board which will be abolished in April 2012) by statutory monitoring by the Welsh Government;
- more consistent planning by local authorities of practitioner development in Welsh-language skills and methodologies;
- adoption of a less time-consuming and more clear-cut system of drawing up plans for improving Welsh-medium education, thus alleviating some administrative demands on local authorities.

5. Reducing bureaucracy

The following proposals aim to reduce bureaucracy, streamline processes and give greater flexibility.

The Front Line Resources Review completed in June 2011, was designed to reduce the administrative burden across the education system, in order to release funding to front line delivery. The Front Line Resources Review One Year on Report¹ suggested that some specific grants be amalgamated but also recommended more general work to simplify the grants system and transfer some grants into the Revenue Support Grant as appropriate.

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

5.1 Annual parents' meetings

What is the current position?

Parents are major stakeholders in the school community and have a clear and strong interest in their child's education. That is why the Welsh Government is committed to ensuring that governing bodies actively engage and remain accountable to parents, by providing them with information and opportunities to discuss and have an input into the way schools are being run.

Currently, parental engagement can be achieved in a number of ways. School governing bodies are required in law to provide parents with an annual report. This includes comparative reports on school performance at the end of key stage teacher assessments, attendance and absence figures, and information about the curriculum and the organisation of the school and teaching methods.

Head teachers are also required in law to provide parents with a report on their child's progress, including details of the child's achievements and progress in each area of learning, the child's skills and abilities and the level of achievements reached.

Finally, schools are required to provide a school prospectus which gives general information about the school such as numbers of pupils, the school's policies and rules and information on the school's performance.

As well as the various reports, governing bodies are also required to have an annual meeting with the parents. The purpose of that meeting is to provide parents with an opportunity to discuss with the governing body the manner in which a school is, or is to be conducted, or to discuss any other matter relating to the school, raised by parents.

¹ Front Line Resources Review One Year On Report dated June 2011 – <http://wales.gov.uk/topics/educationandskills/publications/wagreviews/educationreview2010/?lang=en>.

In addition to this, schools will also arrange informal 'parent evenings' where parents meet members of staff to discuss their child's progress, achievements and areas for development. There may be other opportunities given to parents to discuss their children's progress as well. Some schools may have also developed Parent Teacher Associations (PTAs) where parents and staff support one another and can often engage in fund raising activities to improve the school budget.

Why are we proposing to change the law?

Schools recognise the importance of engaging parents in school life and supplying them with information about their child and the school. The annual parents' meeting was designed to be one such mechanism. However, for some years now the Welsh Government has received representations from stakeholders requesting that the annual parents' meeting be abolished as it is too burdensome and not well attended by parents.

The current law, as set out in section 33 of the Education Act 2002 and the Annual Parents' Meeting (Exemption) Regulations 2005 (S.I. 2005/2911) ("the 2005 regulations"), is flexible about when the meeting is held during the school year. Many schools have a set time for the parents' meeting but this may not be timely or beneficial to parents if there is a specific issue parents wish to discuss e.g. an event may occur at the beginning of the school year in September, but the annual meeting may be scheduled for the end of the school year in July. Governors could adjust the timing of their annual meeting to give parents the opportunity to talk to them but they do not always do so.

The current law also sets out circumstances which can exempt governing bodies from holding this meeting every year. In effect, governing bodies are required to hold a meeting every other year, and in the intervening years may be exempt in certain circumstances which are set out in the 2005 regulations.

The Welsh Government wishes to improve parental engagement in schools, and at the same time reduce the burden on schools of arranging a meeting that is generally not supported by parents and may not be timely or useful to them. The Welsh Government proposes that the bureaucratic burden on governing bodies of automatically holding such a meeting every one to two years should be removed.

Instead, the Welsh Government intends to give parents the right to call for a meeting with the governing body of their child's school. There would be limitations on the number of times that such a meeting would be held but it would give parents the opportunity to have a timely meeting with the governors and be able to question them on a particular issue that is causing concern, for example, where the school is facing major staffing difficulties or possibly closure.

What specific changes are we proposing?

The specific changes proposed are as follows:

- a. That the initiative for calling a meeting between parents and governors should pass to parents. Under the proposals, 5% of parents or carers of pupils registered at

the school would be able to write to the governing body with a petition for a meeting and the governing body would be required to organise such a meeting within a specified timescale (possibly one month) and publicise the resultant meeting to the other parents;

Explanation: There would be no obligation on governing bodies, unlike at present, to organise such a meeting unless parents requested it and a quorum of parents was achieved. The governing body would have to formally respond to parents in writing regarding the points raised at the meeting.

b. To balance accountability against the need to avoid overburdening governing bodies, we propose to limit the frequency of these meetings.

c. Remove Welsh Ministers' ability to prescribe in regulations circumstances when the governing body are exempt from the duty to hold an annual parents' meeting.

Explanation: When the governing body were under a duty to hold a parents' meeting every year, regardless of whether there was demand for such a meeting, we considered it appropriate for Welsh Ministers to prescribe exemptions. Given that the Bill will provide that such meetings should only take place where this demand from parents exists, we do not think that new provision in the Bill should allow for such exemptions to be made. We consider that if 5% of parents of registered pupils at the school feel strongly enough to request a parents' meeting then the governing body should facilitate that.

What outcome do we anticipate?

The Welsh Government's commitment for more pro-active and constructive parental engagement by schools would be met. Parents would be given the initiative to be able to meet the governing body to discuss issues of concern in a timely manner and receive an official response.

5.2 Post-16 learners with special educational needs (SEN) in schools

What is the current position?

Local authorities have a duty to arrange special educational provision for pupils with SEN for whom a statement of special educational needs has been made. The responsibility remains with local authorities until young people have left school, which could be up until the age of 19.

Welsh Ministers currently have responsibility for:

- securing proper provision for education and training connected with learners who are above compulsory school age but have not attained the age of 19;
- considering the needs of people with learning difficulties when carrying out their post-16 functions; and

- securing the provision of boarding accommodation if they are satisfied that they cannot secure the provision of proper facilities for education and training without it.

Whilst Welsh Ministers have a duty to fund post-16 education, taking into account the needs of learners with learning difficulties, this does not extend to assessing the individual needs and arranging provision for individual learners within school settings, which is the responsibility of local authorities.

The Welsh Government does not view this division of responsibility for SEN within schools as the most effective use of resources. It creates uncertainty around responsibility and accountability for SEN provision in schools for the learner.

Why are we proposing a change?

The Welsh Government considers the current fragmented system in which local authorities arrange SEN provision in schools up to age 19 and Welsh Ministers fund from age 16 to be overly complicated. A system that allows both the funding and arrangement of SEN provision in schools to lie solely with the local authority both pre and post-16 would be a more effective use of resources and bring greater consistency to the planning for SEN in schools, whether in a local or regional context.

This unification of funding and decision making regarding provision for post-16 learners with SEN in schools will also give greater coherence to the way that local authorities plan and manage young people's transition on a local and regional basis.

Transferring the funding to the Revenue Support Grant, would reduce the bureaucracy involved in running the grant scheme, in line with the Front Line Resources Review.

What specific changes are we proposing?

The specific changes proposed are as follows:

- a. That local authorities are solely responsible for funding SEN provision for school pupils over compulsory school age.

Explanation: currently, up to age 16 local authorities both arrange and fund SEN provision. However, at 16 local authorities arrange and Welsh Ministers fund. These changes will make local authorities solely responsible and, therefore, accountable for both arranging and funding all SEN provision in schools, both pre and post-16.

- b. That the existing grants to local authorities provided by Welsh Ministers to meet the cost of providing special educational provision post-16 are transferred to the Revenue Support Grant.

Explanation: currently, local authorities get separate annual funding allocations from Welsh Ministers for post-16 SEN provision in special and mainstream schools.

These changes will, in addition to giving local authorities greater control over their resources, make them fully accountable for the decisions they take.

What outcomes do we anticipate?

The transfer of funding will give local authorities full responsibility for SEN in schools and improve local planning and accountability.

5.3 Primary school free breakfast initiative

Where is the current position?

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

Participation is optional at both school and pupil level and the number of additional schools signing up each year has gradually decreased since 2007-08. It is anticipated that this will continue given that the vast majority of schools that want to participate have already signed up (71% of schools are currently involved).

Why are we proposing a change?

The initiative has been administered via a specific grant to local authorities since 2004, however this current funding process is complex to administer. Local authorities currently claim for individual funding elements on a termly basis:

- Set allowance per day per child for food.
- Set allowance per day for staff to supervise and prepare the food – based on a standardised hourly rate and staff to pupil ratios.
- Initial set up allowance to purchase equipment and allowance for replacement items after 4 years involvement in the initiative.
- Cost of providing specified training e.g. Basic Food Hygiene and initial CRB check for new employees.
- Termly allowance per school to support the operation of the scheme – this funding can be used flexibly to support the operation of the initiative, for example, to cover higher food or salary costs than the standardised amounts.

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

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

The specific grant was used during the inception of the initiative as a mechanism to monitor the initial take up and costs involved. Given the initiative has been in operation for more than 6 years and is now well established it would be timely to transfer the funding to Revenue Support Grant (RSG) as part of the Local Government Settlement, but protect provision by legislating to require local authorities to deliver, or continue to deliver, a free breakfast service unless it is unreasonable to do so.

Transferring the funding to the RSG, underpinned by legislation, would reduce the bureaucracy involved in running the grant scheme for both local authorities and the Welsh Government in line with the Front Line Resources Review. It would also provide greater flexibility for local authorities to make decisions based on their local circumstances. The Welsh Government wishes to put in place legislation before the transfer of the grant to the RSG to ensure that local authorities will provide, or continue to provide, a free breakfast service for their primary schools without the lever of a ring-fenced grant.

What specific changes are we proposing?

The specific proposals are:

a. To give governing bodies of maintained primary schools the power to request free breakfasts from the local authority.

Explanation: It will be for schools to decide whether free breakfasts should be provided to registered pupils and children who receive education at the school. If a school decides that it wants free breakfasts to be provided it must make a request to the local authority.

b. To place a duty on local authorities to provide free breakfasts in maintained primary schools in response to a request from the school, or where it is already providing free breakfasts, unless it would be unreasonable to do so.

Explanation: Local authorities will be required to provide free breakfasts where a request is made by a primary school, or where it is already providing free breakfasts, unless it would be unreasonable for the local authority to do so. Non conclusive and exhaustive examples of where it might be unreasonable to provide free breakfasts might include: no or low demand; the cost of provision being disproportionately high for numbers involved; no suitable premises, or inability to recruit staff.

c. To give local authorities the power to withdraw free breakfasts in individual schools if circumstances change and it would be unreasonable to continue to provide it.

Explanation: Where provision for free breakfast already exists in a school, the local authority would have the power to withdraw that provision if circumstances change and it would be unreasonable to continue to make it available. Again, non conclusive and exhaustive examples might include: no or low demand; the cost of provision

being disproportionately high for numbers involved; no suitable premises, or inability to recruit staff.

d. To give the Welsh Ministers the power to issue guidance in relation to the provision of free school breakfasts.

Explanation: We want the Welsh Ministers to have the power to issue statutory guidance to local authorities and schools on the interpretation and application of the new duty and powers. Local authorities and schools would be obliged to have regard to any such guidance. This guidance would build on the current guidance circular no. 021/2008 document 'Primary School Free Breakfast Initiative' which currently forms part of the terms and conditions for operating the specific grant scheme.

e. To give local authorities the power to decide the breakfast content subject to compliance with any regulations made under the Healthy Eating in Schools (Wales) Measure 2009.

Explanation: The local authority would have flexibility to decide the form of breakfast subject to compliance with any regulations made under the Healthy Eating in Schools (Wales) Measure 2009 to regulate food and drink provided to pupils in maintained schools by schools or local authorities.

f. To give the Welsh Ministers the power to transfer to the governing body of a maintained primary school, by order, the local authority's duty to provide free breakfasts.

Explanation: We want the Welsh Ministers to have the power to make an order that would place responsibility for providing free breakfasts on the governing body of a school instead of the local authority. The effect of the provision will be that where an order places the duty on the governing body the local authority will no longer be required to provide free breakfasts at the school. An order could apply to all maintained primary schools, a specified class of such schools and schools maintained by specified authorities.

What outcomes do we anticipate?

The purpose of introducing this legislation is to enable established free school breakfast clubs to continue and new ones to open, unless it would be unreasonable for the local authority to do so, when the funding mechanism to support its operation transfers from a specific grant to RSG.

5.4 School-based counselling

What is the current position?

The School-Based Counselling Strategy was published in April 2008 and has been gradually rolled out across local authorities, with all secondary schools being covered by autumn 2010.

Counselling is one of a range of services that help to support the health, emotional and social needs of young people and lead to a healthy school culture. Early and easy access to counselling in schools can prevent mental health problems developing or becoming more serious, and can build up trust and confidence to enable young people to access more specialist services if required.

Why are we proposing a change?

The Strategy has been implemented through a specific grant to local authorities since 2008/09. The grant requires administration by Welsh Government and local authority officials. Transferring the funding to the Revenue Support Grant (RSG), underpinned by legislation, would reduce the bureaucracy involved in running the grant scheme in line with the Front Line Resources Review, and provide greater flexibility for local authorities to make decisions based on their local circumstances.

Given that the Strategy would have been in place for 5 years at the point of transfer and is now well established, it would be timely to transfer the funding to RSG as part of the Local Government Settlement, but protect provision by legislating to require local authorities to continue to deliver counselling services.

What specific changes are we proposing?

The specific proposals are:

- a. To place a duty upon local authorities to make reasonable provision for counselling services for registered pupils at secondary schools in their area and other young people aged 11-19 who belong to the local authority's area.

Explanation: Local authorities will be required to provide a reasonable level of counselling services, which must include some level of service in every maintained secondary school. Counselling services must be independent of the local authority, the governing body and teaching staff of the school where the young person is registered. This will enable young people to trust and have confidence in the service.

Counselling will be available to all young people aged 11-19 irrespective of whether they are attending school. It will therefore include those who are attending out of school provision, educated by their parents and educated at independent schools.

The Welsh Government wishes to put in place legislation before the transfer of the grant to the RSG to ensure that local authorities continue to provide a counselling service without the lever of a ring-fenced grant.

- b. To give the Welsh Ministers the power to issue guidance in relation to school-based counselling.

Explanation: We want the Welsh Ministers to have the power to issue statutory guidance to local authorities on the interpretation and application of the new duties to ensure access to counselling services for young people aged 11-19. Local authorities would be obliged to have regard to any such guidance. This would also ensure that all counsellors would be working to agreed practice and protocols within

an ethical framework, as outlined by counsellors' professional associations such as the British Association for Counselling and Psychotherapy (BACP). This guidance would build on the current strategic document and the School-Based Counselling Operating Toolkit which was launched in October 2009.

c. To place a duty on local authorities to provide the Welsh Ministers with annual anonymised demographic and outcome data on children and young people accessing counselling.

Explanation: This data will be required to ensure that local authorities are complying with their legal duties and also ensure the supply of data which is of great use for the wider planning of children and adolescent mental health services (CAMHS). Such data are currently being gathered under the terms and conditions of the grant.

What outcomes do we anticipate?

The purpose of introducing this legislation is to ensure that young people have access to, or continue to have access to, an appropriately trained counsellor who will provide formal one-to-one counselling provision for young people of secondary school age.

5.5 Flexible charging for school meals

Where is the current position?

Currently, local authorities are allowed to provide milk, meals and other refreshments to certain categories of children and, where they do so, they are allowed to charge for that provision. However, where they do charge, there is no cap on the amount that they can charge and they must charge every person the same price for the same quantity of the same item. This effectively prevents authorities from helping families with several children by charging a lower price for the second and subsequent children, or from charging younger children less than older children.

Why are we proposing change?

Existing legislation prevents local authorities and governing bodies of maintained schools from charging different prices to different pupils for the same item of food or drink.

Local authorities have indicated that they would welcome the introduction of 'flexible charging for school meals' and that they would make use of this flexibility.

This change in policy would fit in with wider policy developments:

- Appetite for Life – the Welsh Assembly Government's agenda for improving the food and drink provided in schools;
- Healthy Eating in Schools (Wales) Measure 2009 includes a provision 'Promotion of meals in schools and other educational establishments' which would require local authorities/governing bodies to encourage the take-up of school meals;

- Child Poverty Strategy.

Use of flexible charging is entirely optional and will involve a local decision to subsidise meals during the offer period.

The specific proposals are:

a. To repeal sections 512ZA(2) and 533(4) of the Education Act 1996 to give local authorities and governing bodies of maintained schools the freedom to charge different persons different prices for the same quantity of milk, meals and other refreshments.

Explanation: To allow schools and local authorities greater flexibility over meal pricing, which could be used to help vulnerable families and increase the take-up of school meals. The circumstances in which this flexibility would most likely be used are:

- i. to discount the cost of meals for a limited period for the new intake in infant, junior and primary schools;
- ii. to discount the cost of meals for families where there is more than one child wanting school meals.

b. To amend sections 512ZA and 533 to prevent schools and local authorities from charging more than the cost of providing milk, meals or other refreshments to pupils.

Explanation: Currently there is no cap on how much a pupil can be charged. We want to avoid the situation whereby one group of pupils could be charged a higher price for a school meal in order to subsidise a lower charge to another group of pupils. This provision would mean that local authorities and schools must not charge a price that exceeds the cost of providing the meal.

What outcomes do we anticipate?

These flexible approaches to charging may help families who find it difficult to afford school meals particularly where they have more than one child in school and encourage parents to try out school meals for their children and increase take up. This flexibility would be timely as it links to wider work being undertaken to improve food and drink in schools in recognition that a poor diet is a major contributing factor to increasing levels of obesity and health inequalities.

This change will not affect the provision of free school meals (and free milk) to eligible pupils.

Annex: Current regulations and guidance relating to school organisation

Regulations

School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004

The Education (School Organisation Proposals) (Wales) Regulations 1999

The Education (Maintained Special Schools) (Wales) Regulations 1999

The Change of Category of Maintained Schools Regulations 2001

Guidance

Guidance accompanying the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004 (National Assembly for Wales Circular 48/2004)

Welsh Assembly Government Circular 21/2009: School Organisation Proposals

National Assembly for Wales Circular 9/99 School Standards and Framework Act 1998: Organisation of School Places