



David Melding AM  
Chair  
Constitutional and Legislative  
Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA

16 May 2012

Dear David,

**School Standards and Organisation (Wales) Bill - Invitation to give evidence to the Constitutional and Legislative Affairs Committee**

I am writing in response to your letter inviting me to give evidence to the Committee on 28 May 2012.

I am pleased to accept your invitation and look forward to the opportunity to discuss the powers contained within the proposed **School Standards and Organisation (Wales) Bill**.

I would like to provide the following information to assist the committee prior to our meeting as requested.

**1. What impact do you consider the Bill will have?**

The School Standards and Organisation (Wales) Bill (the Bill) includes provision for intervening in schools causing concern, intervention in local authorities, school improvement, school organisation, Welsh in Education strategic plans, parents' meetings, school-based counselling, primary school free breakfasts and flexible charging for school meals.

I consider that the proposals in the Bill will sharpen the accountability of schools and local authorities by bringing together, updating and tightening standards and management.

Chapter 3 of the Explanatory Memorandum sets out the purpose and intended effect of the School Standards and Organisation (Wales) Bill . I draw your particular attention to -

Paragraphs 3.10 to 3.27, 7.1 to 7.8 and 8.2 to 8.14 with regard to Intervention in schools and local authorities provisions.

Paragraphs 3.28 to 3.39, 7.9 to 7.19, and 8.15 to 8.32 with regard to the School Improvement Guidance provisions.

Paragraphs 3.54 to 3.58, together with paragraphs 7.35 to 7.37 and 8.54 to 8.64 with regard to School Organisation.

Paragraphs 3.61 to 3.80, 7.38 to 7.51 and 8.65 to 8.82 with regard to Welsh in Education Strategic Plans provisions.

Paragraphs 3.108, 7.73 to 7.75 and 8.129 to 8.134 with regard to Free Breakfasts in Primary Schools.

Paragraphs 3.113 to 3.116, 7.91 to 7.92 and 8.143 to 8.147 with regard to the powers to charge for school meals.

Paragraphs 3.103 to 3.106, 7.63 and 8.111 to 8.114 with regard to school based counselling.

Paragraphs 3.81 to 3.95, and 7.52 to 7.60 with regard to Parents' meetings.

## **2. What powers are contained in the Bill allowing Welsh Ministers to make subordinate legislation?**

These are detailed in Part 5 of the Explanatory Memorandum, and the relevant information is reproduced at Annex 1 to this letter.

## **3. Why those matters are being dealt with by enabling powers rather than on the face of the Bill?**

Annex 1 provides further information on this matter, but in summary –

the proposed regulations relating to intervention in the conduct of a maintained school will be fairly technical in nature, making provision for the detail relating to the transition of a school's governing body from an interim executive board to a normally constituted governing body. This includes the technical detail of the arrangements for the composition, establishment and conduct of a governing body. Setting this out in secondary legislation will allow the details to change as circumstances change. This was also a regulation making power in the School Standards and Framework Act 1998 and that power is merely brought into the Bill.

setting out consultation and other requirements in a school organisation code rather than on the face of the Bill will enable the use of language more easily understood by interested parties. Furthermore, provisions in the code will be based on best practice and may be developed over time. The format of a code, which can include guidance as well as impose requirements, should enable developments in best practice to be more easily incorporated.

the regulated alterations to schools contained in Schedule 2 are liable to change over time as policy develops. An order making power (as set out at Paragraph 26 of schedule 2) would enable the Act to be amended without the need for new primary legislation.

regulations made under Paragraph 40 of Schedule 5 would be wholly technical in nature and relate to an element of the current change of category regulations.

in relation to WESPs the key duties are set out on the face of the Bill; the regulations will set out the technical detail flowing from those key duties. This detail will need to be reviewed and amended on a regular basis based on experience, and so it would not be appropriate to set all of that detail out in the Bill. Setting the detail out in regulations will provide the flexibility needed to make the changes based on experience and in a timely manner. The detail regarding all these matters to be included in regulations is technical and it is not anticipated that it will be controversial.

in relation to school-based counselling it is appropriate that the Welsh Ministers have the means to respond to future evidence based needs. The Welsh Government is currently considering the outcome of its recent pilot about school-based counselling in primary school, and ways in which it might support local authorities to extend counselling services to years 5 and below in the primary sector. The Welsh Government is aware of the recommendation made by the British Association of Counsellors and Psychotherapists, in its evaluation report published in October 2011, that the Welsh Government considers rolling out its counselling strategy to the primary school sector using an age appropriate format.

#### **4. Why the affirmative or negative resolution been chosen to exercise the powers in each case and whether any of the powers are exercisable in other ways, for example by the so called “super affirmative” procedure?**

The nature of the procedure to be applied to the powers in each case is set out in the table at Annex 1.

I confirm that no powers are exercisable by way of the so-called ‘super-affirmative procedure’.

#### **5. Are there any powers that are exercisable other than by Statutory Instrument or without any specific Assembly procedure?**

Clarification note: Question relates to any powers exercisable by the Welsh Ministers. Specifically, the powers in Section 58(2), 67(3) and in para 341(1)(b) of Schedule 5.

There are powers of direction in sections 12, 15, 16, 17 relating to intervention in a school Governing Body by the Welsh Ministers.

Sections 24, 25, 26, 27 and 28 also contain powers of direction, but in relation to intervention in a local authority by the Welsh Ministers.

Section 20 also gives the Welsh Ministers a power to issue statutory guidance to local authorities in relation to how they exercise their powers of intervention.

Chapter 3 in Part 2 contains a power for the Welsh Ministers to issue statutory guidance to school authorities in relation to improving educational standards at schools

Section 37 in Chapter 3 of Part 2 gives the Welsh Ministers a power to direct a school authority to take action to comply with the statutory school improvement guidance.

Sections 52 and 54, and Paragraph 34(1) of Schedule 5 provide the Welsh Ministers with powers regarding school organisation proposals.

Sections 58, 60 and 63 provide the Welsh Ministers with powers regarding the rationalisation of school places.

Sections 66, 67, 69 and 71 set out powers of the Welsh Ministers regarding regional provision for children with special educational needs.

Sections 72 and 74 provide the Welsh Ministers with powers in relation to sixth form education.

Section 82 provides the Welsh Ministers with the power of directing a local authority to discontinue a community or foundation special school.

Section 89(5) will enable Welsh Ministers to issue guidance regarding free breakfasts in primary schools.

Section 93 (2)(b) gives the Welsh Ministers the power to issue guidance regarding School Based counselling.

Section 94 provides the Welsh Ministers with the power to direct local authorities to provide information regarding their independent counselling services.

## **6. How will the powers contained in the proposed Bill change the powers currently held by Ministers?**

The table set out in Annex 2 to this letter sets out the key changes to the Welsh Ministers' current powers.

## **7. How does the Government intend to implement these powers?**

Clarification note: In particular the planned extent of consultation on Ministers' subordinate legislation powers in the Bill and broadly when it is envisaged powers will be commenced and used.

The provisions relating to intervention in the conduct of a maintained school will be commenced by way of commencement order. I consider it appropriate that the guidance should be issued at the same time as the main provisions are commenced. Work on the guidance is on going and will be subject to appropriate consultation. In light of that we anticipate that the provisions will be commenced in the latter half of 2013 to coincide with the issuing of the guidance.

The Bill provides that the school improvement guidance provisions in Chapter 3 of Part 2 of the Bill will be commenced 2 months after Royal Assent.

Work is already underway to develop a body of case studies, materials and resources on the latest evidence and research about effective practice and establish a methodology for collecting and disseminating best practice. The High Quality Teaching Resources will be published online and will be launched on Learning Wales in September 2012. Once this work is complete, we will consider the areas where evidence shows that statutory improvement guidance might be most effective and determine the timetable for its introduction.

In terms of Part 3 of the Bill, the school organisation provisions will be brought into force by commencement order so that the new regime on school organisation will be ready for September 2013. The code would be subject to consultation prior to its being laid, as

required in section 39 of the Bill. The Welsh Government will provide awareness sessions for local authorities and others who will be responsible for complying with the code.

Any change made by order under section 57 would be very small in nature and effect, and for that reason prior consultation would not be considered necessary. It is not anticipated that this power would need to be used in the near future.

Before making an order under paragraph 26 of Schedule 2, the Welsh Ministers would conduct appropriate consultation with the relevant stakeholders. However, no such order is planned for the foreseeable future.

Regulations made under paragraph 40 of Schedule 5 are expected to be brought into force shortly after the Bill is passed and would coincide with the commencement of the other relevant Bill provisions. The content of these regulations would be technical and their effect very minor. Therefore no prior consultation with stakeholders is considered necessary.

It is anticipated that the provisions for WESPs will commence in September 2013. The first statutory Plans will be submitted to the Welsh Ministers for approval by 20 December 2013 and will become operational from 1 April 2014. A consultation will be conducted on the draft regulations and they will come into force at the same time as the Bill provisions.

The provisions relating to free breakfasts in primary schools will be brought into force by way of a commencement order. We propose to commence the provisions in April 2013. Guidance will be developed to which local authorities and schools must have regard. The guidance would build on the current guidance circular no. 021/2008 document 'Primary School Free Breakfast Initiative' which currently forms part of the terms and conditions for operating the specific grant scheme. Local authorities and schools will be consulted on the draft guidance.

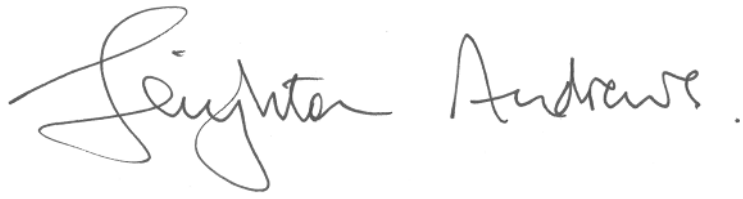
The provisions relating to the power to charge for school meals will come into force two months after the Bill receives Royal Assent. Guidance will be developed to assist local authorities and schools use flexible charging. Local authorities and schools will be consulted on the draft guidance.

The provisions relating to school-based counselling will be brought into force by way of a commencement order. We propose to commence the provisions in April 2013. There is no current timetable for making regulations under section 93(1)(d) and (5) as the Welsh Government is considering the outcome of the recent pilots in primary schools. We would consult with key stakeholders before introducing regulations in these areas.

The parents meeting provisions are all contained on the face of the Bill – they will commence 2 months after the Bill receives Royal Assent.

I trust that the committee finds this paper helpful and look forward to discussing this further on 28 May.

Yours sincerely

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a large, sweeping initial 'L'.

**Leighton Andrews AC / AM**  
Y Gweinidog Addysg a Sgiliau  
Minister for Education and Skills