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## **CHILDREN AND YOUNG PEOPLE'S COMMITTEE:**

### **Consultation on the School Standards and Organisation (Wales) Bill**

#### **About NUT Cymru:**

NUT Cymru represents primary and secondary school members and is the largest teaching union in Wales. We welcome the opportunity to contribute evidence to the Children and Young People's Committee on the School Standards and Organisation (Wales) Bill.

#### **Consultation Questions:**

##### **General:**

#### **1. Is there a need for a Bill to make provision about school standards and school organisation? Please explain your answer?**

In part we believe this is needed. There are aspects within the proposed Bill that are welcomed and acceptable, such as support for Welsh language schemes, proposals around free school breakfasts and education for post-16 learners with special educational needs in schools. However, there are also elements that we are very much opposed to, such as linking intervention to school banding.

One aspect where it can be argued that a Bill of this nature is needed is in terms of responsibility. Teachers have, as a profession, felt undermined by some of the rhetoric of government over the past few years. While we strive towards improving targets, the nature of criticism of the education sector, and the constant stream of new policies and initiatives against a backdrop of systematic underfunding make the task all the more difficult. Hopefully, this Bill will show the Welsh Government is willing to take responsibility for the overarching approach to standards and the profession, amongst other stakeholders, will not simply be treated as a scapegoat for any failings. If education is to be delivered to the highest levels there must be a collaborative approach, not one based simply on criticism.

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answers.**

On the whole the objectives, as detailed in the description of the Explanatory Memorandum, will be met by the Bill. The key discussion is if the changes proposed in the Bill are going to be delivered in practice as the Bill intends, and if they are changes that will improve the system or not.

**3. What are your views on each of the main parts of the Bill;-**

**Part 1 – Introduction (section 1)**

This is simply an over view of what is contained within the Bill.

**Part 2 – Standards (Section 2-37 of the Bill) (see pages 9-17, 92-99 of the Explanatory Memorandum)**

Much of what is outlined is acceptable. Ensuring that guidance is clear and up to date for local authorities and schools to examine in one place is to be welcomed. Equally, the commitment to ensure that local authorities are clear about the rationale behind their actions is a positive step forward.

One concern is that many of the grounds for intervention are open to wide interpretation.

For example, local authorities may intervene if performance of pupils is low when equated to pupils at comparable schools. The definition of a comparable school in the first instance is not clear. Grounds for intervention such as this could easily be manipulated. If a school is ‘performing poorly’ in relation to one comparable school, but exceeding the performance of another is that a ground for praise or punishment? A local authority could intervene in schools where it is inappropriate to do so based on some of the vague criteria provided.

Some of the grounds for intervention imply local authorities would be expected to consider the school banding system as the basis of evidence behind school interventions, including judging schools as in need of being placed in special measures.

The NUT continues to believe that the nature of the school banding system is flawed and remains vigorously opposed to it. We would have serious concerns that by imbedding the system into legislation, the government will be ensuring that this league table style system will determine the running of schools in Wales in future.

We are also concerned that in creating a league table system based on school bandings the Welsh government risks creating a cycle of decline for schools placed in the lower end of the bandings. By identifying school banding as a key driver behind the ability of local authorities intervening in schools it appears as if the Welsh government could use this system as a way of targeting schools based on a snapshot of performance rather than a true overall picture.

The consultation document which closed in January on this Bill implied that the rationale for these proposals is a combination of “local authorities should be making better use of the information they have in relation to the performance of schools in their areas” (page 5) and the infrequent usage by local authorities of their existing powers of intervention (page 6). Rather than moving immediately

to a system of banding, it would have been more appropriate to ensure first that local authorities were fulfilling their existing responsibilities for school performance. Simply introducing the school banding system will not improve the quality of local authorities' work in this area, but is likely to penalise schools in areas where local authority support is poor.

The point about local authorities being reluctant to issue warning notices is picked up in the Explanatory Memorandum (page 10; 3.7). However, no consideration seems to have been given as to why local authorities have rarely used their existing powers of intervention, other than potential "confusion" because there is currently no single document which includes this information. It may be, as has been shown to be the case in England, that local authorities may choose not to use them because of the damage intervention powers may cause to their relationship with an individual school. Collaboration and trust between an authority and an individual school are essential prerequisites for school improvement work, yet can be destroyed if an authority moves swiftly to exercise of its formal powers of intervention. Similarly, local authorities may believe that intensive support for teaching and learning, for example, may be a more effective intervention than the imposition of an Interim Executive Board. It should not be the Assembly's expectation, therefore, that these proposals "will lead to an increase in interventions in schools causing concern".

Legislating to ensure that local authorities must provide detailed and specific information regarding their moves to intervention in the warning notice is welcomed. One concern is that the local authorities must specify the action they are minded to take if the governing body fails to take the required action. This appears to be pre-judging the outcome of any measures taken by the school and its governing body. It may be that providing details of what possible action is likely should measures fail is helpful. It could also, however, lead to confusion and concern amongst parents and staff which exacerbates any potential problems. Equally, there could need to be a change of approach by the local authority determined by developing circumstances. Making a commitment to specific action prior to any detailed intervention seems inappropriate.

One of the major omissions in the Bill is the necessity to work in a collaborative approach with staff and governing bodies. Much of the Bill focusses on intervention through dictating budgets; appointing interim executive members and/or governors etc. There appears little in the Bill that focusses intervention on a collaborative approach. The best way to improve a school is to work with its existing staff members. We have concerns that an approach based on external input, making sweeping decisions without a real grasp of the nature of problems at a school, could lead to even greater concerns.

In terms of examining the Bill's approach to school improvement, sharing best practice is always welcomed by the teaching profession. It is important to improving standards and ensuring that teachers across Wales are aware of innovative and effective teaching practices, and that those practices are made available.

However, best practice in one part of Wales, or in one school for one set of students, will not always transfer effectively to another. Whilst teachers would welcome advice and guidance to support their development and implementation of best practice, the idea of Welsh Ministers having the power to compel schools against their wishes, and potentially against the ethos and focus of the school, to adopt specific strategies, initiatives or methods would not be acceptable.

No evidence is provided to support the assertion in the Explanatory Memorandum (page 15; 3.31) that this change is needed because “some schools are reluctant to change their approaches.” This is highly insulting to the profession and suggests that it is the Department and its civil servants, rather than school leaders and teachers, who know best.

The suggestion that centrally –approved teaching and learning approaches would be prescribed in statutory guidance for “certain categories” of schools is predicated on the idea that there is only one “right” way to teach. Nothing could be further from the truth. As those in the profession know, there is no “one size fits all” approach to school improvement. What works in one school may not in another, due to a wide range of contextual and personal factors. The proposed approach would also de-professionalise those working in any schools subject to the statutory guidance, as they would be required to follow and deliver prescribed approaches rather than work collectively to use their professional skills and knowledge to identify solutions appropriate to their own school. This reductionist approach to school improvement is certainly at odds with the stated aspiration elsewhere in Government education policy that teaching should become a Masters level profession.

Many LEAs do not have the capacity to manage a school centrally if delegated authority were removed from the Governing Body. Intervention powers can, therefore, be something of an empty threat.

### **Part 3 – School Organisation (Sections 38-84 of the Bill) (see pages 17-21, 99-106 of the Explanatory Memorandum)**

There is a concern that allowing local authorities to decrease the physical capacity of schools will aid the dismantling of small schools, making them unsustainable. This risks taking pupils and funding away from schools. As a consequence the ability to educate those that remain will be compromised, ultimately leading to closing schools and increasing class sizes and workloads for teachers in other schools. It will also lead to redundancies for teachers.

We have serious concerns about the impartiality of decision making if decisions are not referred to Welsh Ministers. Under this plan the proposer will be able to determine, and essentially, ignore the objections of a long list of stakeholders. There is a very clear question of impartiality on this issue. Instead of allowing Welsh Ministers to examine the case for, and objections against, on an impartial basis, the proposer will determine if the objections to their own case merit support. We believe that Welsh Ministers, or the independent local decision making panel, should examine the basis of all objections.

Although staff employed in schools named in a statutory notice are included in the list of categories of statutory objector, a higher threshold of objectors is needed than for some other categories, in order for the objection to be valid. The NUT believes that, as key stakeholders in schools, both staff and parents’ objections should be given as much weight as those made by governing bodies or school councils. Provision also needs to be included which would reflect the differing sizes of schools. The threshold of 10 staff or parents may be a tiny proportion of a larger secondary school but could exceed the entire staffing complement of a rural primary school. Consideration should therefore be given to making these proposals proportionate to school size.

No school should be closed without an examination of the implications of doing so. This proposal essentially gives guidance to proposers to close schools with fewer than 10 pupils irrespective of the reasons behind that number. It could be that a school has this amount of children because travelling to a different school is feasible. The socio-geographical nature of the school must also be considered, not just decision by headcount. It is also important to look at the potential for growth at the school. How many children will be attending in 2, 5 or 10 years' time?

Whilst sustaining schools as small as this is not appropriate in some cases, there is a concern that these plans give the proposer the incentive to ignore the rationale behind the school, and make any objections pointless given they can be dismissed by the proposer. It is difficult to see how there can be an independent view on objections when the proposer who wishes to close the school will determine if they are valid or not.

These proposals also ignore the contribution to the community which such schools, typically situated in rural areas, offer. This is particularly important given the high levels of rural deprivation, where the school may be the only municipal facility available to the community. It also completely ignores the issue of parental choice: many parents prefer their children to attend their local school precisely because of its small size and the more personalised service it can offer and also because they would prefer that their young children did not have to travel to school. These issues may be less easy to measure, but are more important to parents than a straightforward "value for money" judgement.

#### **Part 4 – Welsh in Education Strategic Plans (sections 85-88 of the Bill) (see pages 21-25, 106-107 of the Explanatory Memorandum)**

The replacement of the Welsh Education Schemes of the Welsh Language Board with the new Welsh in Education Strategic Plans appears sensible in terms of improving local authorities' engagement with strategic planning and development for Welsh-medium provision. The Bill fails to address, however, why this new initiative will succeed where previous strategies failed at the local level. Although the proposals list a number of requirements on local authorities, there is no consideration of how LAs will achieve them and what would happen if they failed to do so – would LAs be subject to any sort of penalty or intervention for example? The schools and other settings which would be subject to the new WESPs could be forgiven for being sceptical about what practical advances will be made under these proposed arrangements.

#### **Part 5 – Miscellaneous School Functions (section 89-97 of the Bill) (See pages 25-31, 107-109 of the Explanatory Memorandum)**

The proposal that five per cent of parents would be able to trigger a meeting with the governing body is a cause for concern as it could potentially be used by a small group of parents for vexatious purposes. The vast majority of parents could be extremely happy with a school's provision and may therefore see no reason for attending a single issue meeting with governors, thereby giving undue influence to a minority group. The proposal that the governing body would have to respond in writing to issues raised during the meeting increases the likelihood of non-attendance by satisfied parents.

In addition, the proposal by-passes completely the relationship between parent governors and their electorate. If parents at the school feel that a meeting with the governing body is needed, the parent

governor would be a more appropriate conduit for such a request. This is particularly the case for engaging parents who may lack confidence to participate in the life of the school through more formal mechanisms.

In regards to free school breakfasts, the proposals on the whole appear reasonable. However clarity would be required on some of the criteria that would lead local authorities to determine if it would be unreasonable to provide, or continue to provide, free breakfasts. What is considered the level to which low demand is applicable or costs being disproportionate? What lengths must local authorities go to in order to prove they have done everything possible before determining that they are unable to recruit staff for the scheme etc.? This is often as big an issue as demand.

One of the reasons that teachers have embraced the concept of free breakfasts, and why it has been successful, is that it has not increased their workloads and taken away their time and energy from teaching and learning in the classroom. Having the local authority run the provision ensures that the benefits of the scheme such as increasing concentration, early attendance etc., are delivered but without any additional demands on teachers. The NUT would have concerns that in withdrawing the obligation of local authorities to provide the scheme and placing that onus on the governing body of the school, the delivery of this scheme could end up being placed on teachers and support staff. This will result either in increased workloads, tensions between staff and governing bodies or the scheme disappearing from schools altogether. We would recommend that the scheme be maintained wholly by local authorities.

In addition, to be successful, the scheme must be adequately funded. The lack of ring-fenced funding for this grant is a serious cause of concern, as local authorities may have to make difficult choices given the financial constraints they are currently under. Evidence shows that where parents are asked to make a greater contribution there is less take-up. This proposal could therefore be seen as an attempt to shift blame onto local authorities and schools if this previously successful central initiative is perceived as less effective when devolved completely to the local level.

We support proposals around school based counselling, special education and flexible charging for school meals.

#### **Part 6 – General (Sections 98-102 of the Bill) (See pages 109-110 of the Explanatory Memorandum)**

This simply sets out the timetable of the Bill's introduction.

#### **4. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

One of the main barriers to implementing this Bill effectively is that it appears to have ignored the cooperation needed with schools. On the issue of intervention there is a sense that the Bill is focused entirely on challenge and not on support. Many of the grounds for intervention will be things that are potentially beyond the school's control, are caused by external/specific factors or are specialist issues within an otherwise functioning school. Initiating an intervention process that could result in budgets being dictated to the school or governors/interim executive members being installed against the school's wishes could create major conflict and increase difficulties.

While it would be expected that a common sense approach would serve to ensure that there is cooperation and any intervention is done in collaboration with the school, the Bill does not insist upon that and as a result potential clashes could occur.

As stated in this document some of the interventions, especially those which are based on comparing the performance of a school against others of similar capacity, will be focused on the banding system. Given that the vast majority of schools and staff are vigorously opposed to the banding process this could again cause conflict. We also believe that the banding system gives a misleading impression of school performance and could lead to interventions that are not necessary.

Another potential barrier to this Bill being implemented effectively is the ability of local authorities to undertake their roles effectively. There is a great focus on the role of local authorities in the Bill, from determining when intervention is necessary and in what form, to determining the future of schools and ruling on any objections. Estyn reports have struggled to find many good performing local authorities in regards to education, with special measures applied to some in Wales. It is difficult to believe that with the current support structures in place local authorities will have the capacity, capability and ultimately confidence of the profession and public to take up these tasks effectively. The history of delivering funding effectively to schools by local authorities would also call into question their delivery roles in relation to special education, school based counselling and free school meals.

#### **Powers to make subordinate legislation:**

#### **5. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

The subordinate legislation appears in line with what is being proposed in the Bill. However, we remain cautious of any guarantees that anything is *'unlikely to be controversial.'*

#### **Financial Implications**

#### **6. What are your views on the financial implications of the Bill?**

What it is important to recognise in terms of the financial implications of the Bill is the historic underfunding from which we currently approach education. The latest figures available note that there is a £604 per pupil funding gap between England and Wales. That has a significant influence on the performance of schools and the need for interventions. Equally, while there is a substantial amount of money being put into the 21C Schools programme, it is still far less than was originally outlined as needed by local authorities in Wales. This will mean there will continue to be schools across Wales operating in conditions that are not fit for purpose.

Each of the options proposed by the Welsh Government through its cost/benefit analysis comes with a significant financial burden. This burden must be met from new resources as there simply is not the finance available within existing local authority or school budgets.

The cost of what measures can, or should, be put in place to aid school performance should in theory be secondary to the need. Unfortunately, this is not a realistic assessment of school and local authority education budgets. The costs for intervention can be very high. If the Welsh Government

is keen to pursue a course, through this Bill, of increasing interventions in schools in Wales it must also recognise that there will be a financial burden associated to that. We would strongly argue that consideration of this factor must be given and additional financial resources are made available to take account of it. If schools and local authorities are expected to produce the funding for interventions we will either see the Bill fall flat (as there will not be the funding to deliver it), or we will see a situation where greater numbers of schools and local authorities struggle as a result of drains on budgets. It is unreasonable to expect to improve a system with ever decreasing budgets.

**Other comments:**

**7. Are there any other comments you wish to make about specific sections of the Bill.**

There is much to welcome in this Bill which will hopefully lead to significant improvements across a number of areas within the school system. Certainly, proposals around free school meal charging, provisions for pupils with special educational needs, school based counselling and the reduction of bureaucracy, are all positive steps forward.

Where we exercise caution is in relation to proposals around interventions in schools by local authorities. What we would like to see is a system of cooperation and collaboration between parents, schools and the local authority to ensure that any school which requires assistance is given the necessary support. There must also be agreement on what assistance is required and the challenges which currently exist.

What would be a cause for concern is if this Bill was used by local authorities as a green light to intervene when they may not understand the challenges faced by a particular school, or may not have the capacity to offer the support needed.

We are encouraged that the Education Minister has stated publicly that he does not want to see banding as the sole driver in determining interventions. It will be important to keep a close eye on the practical application of the proposals to ensure that local authorities take a number of factors into consideration, and do not simply revert to interventions based on a fundamentally-flawed banding system, which many in the education sector continue to oppose.