



COUNCIL – 22ND APRIL 2014

SUBJECT: IMPLICATIONS OF THE SCHOOL STANDARDS AND ORGANISATION (WALES) ACT 2013 AND SCHOOL ORGANISATION CODE ON THE DETERMINATION OF SCHOOL ORGANISATION PROPOSALS

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To update Council of the changes to the way in which school organisation proposals including those which receive objections are approved and/or determined following the implementation of the School Standards and Organisation (Wales) Act 2013 and associated School Organisation Code which came into effect on 1st October 2013.
- 1.2 To recommend to Council that the responsibility for approving and/or determining school organisation proposals, including those which receive objections (except for those that are required to be considered by Welsh Ministers) is a function that should be exercised by Cabinet.

2. SUMMARY

- 2.1 The purpose of this report is to make Council aware of the changes to the way in which school organisation proposals are approved and/or determined following the implementation of Part 3 of the School Standards and Organisation (Wales) Act 2013 (“**the 2013 Act**”) and the School Organisation Code (“**the Code**”). The changes have resulted in local authorities becoming responsible for determining most school organisation proposals including those, which receive objections with some exceptions.
- 2.2 In order to facilitate the new requirements placed on local authorities to approve and/or determine proposals including those which have received objections the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013, was enacted on the 22nd October 2013. This added the responsibility to approve and/or determine school organisation proposals under the 2013 Act to the schedule of functions set out in the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 which may be (but need not be) the responsibility of an authority’s executive. This gives the Council discretion to determine whether the function is to be the responsibility of the Council or the executive.
- 2.3 This report sets out the background, details of the new requirements placed on local authorities and the options available in respect of the local decision making process which may be adopted by Council.

3. LINKS TO STRATEGY

- 3.1 School Organisation Proposals are linked to both the Welsh Government's current 21st Century Schools Programme and the requirement on the Council to reduce surplus places in schools.

4. BACKGROUND

- 4.1 School Organisation Proposals include a range of measures such as:

- School Closures
- School Amalgamations
- Opening New Schools
- Changes to Nursery Provision
- Changes to Sixth Form Provision
- Change of Language Medium
- Change of School Category
- Proposals Relating to SEN Provision

- 4.2 Part 3 of the 2013 Act reforms and brings together in one place the law relating to school organisation proposals for Wales. In particular it creates a new framework for the determination of proposals, which receive objections. The key change is that Welsh Ministers will no longer determine the majority of proposals; these will be determined as outlined below.

- 4.3 The 2013 Act also required Welsh Ministers to publish the Code, found at Appendix A. The Code includes practical guidance to which relevant bodies must have due regard and sets out the policy context, general principles and factors to be taken into account in preparing, consulting on, publishing, approving or determining school organisation proposals.

- 4.4 Both Part 3 of the 2013 Act and the Code came into force on 1st October 2013 and applies to all proposals published by way of statutory notice on or after that day.

- 4.5 Under the previous statutory framework all school organisation proposals, which received objections during the statutory consultation process had to be referred to the Welsh Ministers for determination. This is no longer the case, with local authorities now empowered to determine certain categories of proposals. The 2013 Act sets out which proposals are to be determined by local authorities and which fall to be determined by the Welsh Ministers.

- 4.6 Welsh Ministers will only determine a proposal where (ss50(1), 52(2) and (5) and 54 of the 2013 Act applies namely if:

- (a) it affects sixth form education
- (b) the proposer is not the relevant local authority and the relevant local authority has objected to the proposal
- (c) it is a proposal related to a proposal mentioned in subparagraphs (a) or (b) which has not been determined before the Welsh Ministers determine the related proposal; or
- (d) it has been properly referred to the Welsh Ministers pursuant to s54 of the Act.

- 4.7 The Local Authority will determine a proposal where (ss52(1) and 52(4) and (6) of the 2013 Act applies if:

- (a) it is not required to be determined by the Welsh Ministers under s50, it has been made by a proposer other than the relevant local authority and there has been an objection to the proposal or it is a proposal related to such a proposal which has not been determined before the local authority determine the related proposal
- (b) in any other case, the proposer will determine the proposal (s53(1)).

- 4.8 The 2013 Act and Code is particularly relevant to Caerphilly County Borough Council at this time because of the 21st Century Schools Programme and will apply to all school organisation proposals determined under the 21st Century Schools Programme.
- 4.9 Members will be aware that Caerphilly has commenced the 21st Century Schools Programme. The Secondary Rationalisation, Phase 1 Islwyn West is currently being progressed. The processes undertaken to date have been authorised by Cabinet under its existing powers contained within the Scheme of Delegation. Following the first stage of Formal Consultation, publication of the Statutory Notice was approved by Cabinet in February and published in early March with the objection period ending on 3rd April 2014. Under the Code, the Council must determine the outcome of the Statutory Notice within 16 weeks of the 3rd April 2014 i.e. the end of the objection period. These proposals will be determined in accordance with the decision made by Council under this report.
- 4.10 In order to facilitate the new requirements placed on local authorities to approve and/or determine proposals including those which have received objections, the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013, was enacted on the 22nd October 2013. This added the responsibility to approve and/or determine school organisation proposals under the 2013 Act to the schedule of functions set out in the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 which may be (but need not be) the responsibility of an authority's executive. This gives the Council discretion to determine whether the function is to be the responsibility of the Council or the Executive.
- 4.11 The new Code provides that:-
- 4.11.1 *Executives and/or Cabinets are already responsible for overseeing school organisation planning, including decisions to consult on and to publish school organisation proposals and will have a well developed understanding of school organisation issues. This understanding, combined with their more general experience of decision-making and the fact that they are democratically accountable to the local electorate, makes executives well placed to decide whether or not contested school organisation proposals should be approved.*
- 4.11.2 *However, if they choose to do so, local authorities will not be prevented by Schedule 2 to the relevant regulations from adopting alternative, locally agreed processes for taking such decisions. These might include the formation of a local decision making committee, potentially in collaboration with other local authorities in their region. Where local authorities choose to follow this route, they will need to consider carefully how they will ensure that such bodies deliver fair and robust decision-making.*
- 4.12 Having regard to the above, the Code clearly suggests that the Executive would seem to be the most appropriate decision maker as it already has the expertise in school organisational issues. In Caerphilly the Cabinet already has extensive experience of school organisation proposals due to its close involvement in the 21st Century Schools Programme and as such it would be well placed to accept this new statutory responsibility.
- 4.13 Members will note that the Code permits the delegation of the decision-making powers to a panel of members or the establishment of a joint committee in collaboration with other authorities.
- 4.14 Members would need to be mindful of the complications of setting up a joint committee in terms of membership and political balance.
- 4.15 Members are asked to note the contents of this report and to consider the recommendations set out in paragraph 9.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no direct implications from this report. However, any proposed school re-organisation would include an Equalities Impact Assessment as a key part of the process.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no direct implications from this report. However, there are financial implications involved with the funding of the 21st Century Schools Programme. School re-organisation proposals generally tend to deliver longer-term revenue savings.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no direct implications from this report. However, school re-organisation proposals may have personnel implications which are managed in accordance with relevant policies.

8. CONSULTATIONS

- 8.1 The views of the listed consultees have been incorporated into the report.

9. RECOMMENDATIONS

- 9.1 To note the implementation of the new legislation and associated regulations.
- 9.2 That the approval and/or determination of school organisation proposals including those which receive objections, (except for those that are required to be considered by Welsh Ministers) become a function exercised by Cabinet.
- 9.3 To authorise the Monitoring Officer to make the necessary changes to the Scheme of Delegation in the Council's Constitution.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To establish the decision-making arrangements for the approval and/or determination of school organisation proposals, including those which receive objections in accordance with the School Standards and Organisation (Wales) Act 2013 and School Organisation Code.

11. STATUTORY POWER

- 11.1 School Standards and Organisation (Wales) Act 2013
- 11.2 Local Authorities (Executive Arrangements) (Functions & Responsibilities) (Wales) (Amendment) Regulations 2013.

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Consultees: Corporate Management Team
Education Senior Management Team
Nicolle Scammell, Acting Director of Corporate Services and S151
Sandra Aspinall, Acting Deputy Chief Executive
Gail Williams, Interim Monitoring Officer
David A Thomas, Senior Policy Officer (Equalities & Welsh Language)
Councillor Rhianon Passmore, Cabinet Member, Education & Lifelong Learning

Appendices:
Appendix A The School Organisation Code

Background Papers: Cabinet Report: Statutory Notice