

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:**           **CABINET**

**DATE:**                 **TUESDAY, 21 APRIL 2015**

**REPORT BY:**         **CHIEF OFFICER, EDUCATION AND YOUTH**

**SUBJECT:**           **SCHOOL STANDARDS AND ORGANISATION ACT**  
**2013**

**1.00   PURPOSE OF REPORT**

1.01   The purpose of the report is to make Cabinet aware of the changes in respect of school organisation decision making arising from the School Standards and Organisation (Wales) Act 2013 (SSOWA) and for Cabinet to undertake the executive functions as required from the changes contained in SSOWA.

**2.00   BACKGROUND**

2.01   Under previous legislation, namely the School Standards and Framework Act 1998, local authorities undertaking the process of published proposals and giving anyone the opportunity to object to such proposals. If any objections were received, the proposals would then be determined by Welsh Ministers. The Welsh Ministers would then approve the proposals (with or without modification) or reject them.

2.02   The school organisation procedure was reviewed by Welsh Government prior to the 2013 Act. It was viewed by Welsh Government that the process took too long and the involvement of Welsh Ministers in every proposal which had received objections added an unnecessary level of bureaucracy, sometimes causing significant delay.

2.03   It was found that most determinations made by Welsh Ministers took several months, starting from the date on which the statutory notice relating to the proposal was published, in some complex cases, proposals have taken over 6 months to determine.

2.04   The previous system allowed even a single objector without a direct interest in a school to cause a referral to Welsh Ministers. This was considered inappropriate by the Welsh Government. It was viewed that provision could result in delays and uncertainty for local parents and children directly involved with a school, whether or not they supported the proposed change.

2.05   The SSOWA repeals the various elements of existing legislation on school organisation in Wales and replaces them with a single, comprehensive legislative framework.

- 2.06 New arrangements in the SSOWA are included which are designed to reflect the impact of school organisation 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 the locality. The new arrangements have been made to ensure that the vast majority of proposals are determined at the local level resulting, in theory, for a swifter process.
- 2.07 Specifically, SSOWA provides for a statutory code, the School Organisation Code (“the Code”), to deal with consultation and other arrangements, modelled on best practice. Furthermore SSOWA removes the situation where all proposals with objections are referred to the Welsh Ministers. Only those proposals which receive an objection from a local authority or which are connected solely with the removal or establishment of sixth form provision will be referred to Welsh Ministers.
- 2.08 Local authorities, instead of Welsh Ministers, are required to approve or determine most proposals which have received objections. Local authorities are, despite the changes, still required to have consulted, published and set objections periods as before.
- 2.09 The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales)(Amendment) Regulations 2013 permit a local authority’s executive to exercise this function of determining school organisation proposals.
- 2.10 The Code states that, ‘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 more general experience of decision making and democratic accountability to the local electorate makes executives well placed to decide whether or not contested school organisation proposals should be approved’.
- 2.11 Under the Code the Cabinet could consider delegating its determination function to locally agreed processes for taking such decisions. This might include the formation of a local decision making committee potentially with other local authorities in the region.
- 2.12 The recommendation is however that the function remains with the Cabinet for the immediate future as the Executive is already well placed to make such determinations. Currently no other Authority in Wales has delegated this function to any other body.
- 2.13 Determination by Local Authorities places upon them the following responsibilities:-
- That the determination process is fair and objective
  - Objections are conscientiously considered alongside the arguments in respect of the proposals and in the light of the factors to be taken into

account when developing and considering proposals

- Decisions must be issued in writing and published electronically, setting out clearly the reasons for the decision
- Decisions made would be subject to potential challenge by way of judicial review and consequently decision making has to be procedurally correct, reasonable and rational, informed and robust

2.14 Decision making under SSOWA has received its first legal challenges. In December 2014 a School Organisation decision undertaken by Bridgend County Borough Council was set aside. Subsequently, the Minister failed to support a proposal issued by Denbighshire County Council. The Bridgend decision and subsequent Counsel advice to the Welsh Government have effectively set clear expectations on documentation and evidence to underpin decision making.

### **3.00 CONSIDERATIONS**

3.01 The local authority's constitutional structure and processes are already appropriate in accommodating such decision making, with Cabinet identified as decision maker for key school organisation decisions.

3.02 There would be no additional resource requirements if the decision making function remains with Cabinet. There would however be financial implications if the local authority were to delegate the function to a local decision making committee. Such a body may require administrative costs, the services of a clerk provided by the authority and there would be training requirements as well as likely expenses for members of the committee.

3.03 The determination for school re-organisation, decision making will be less onerous and time consuming than previous determination through the Welsh Minister. However, developing evidence and consultation documentation to support school organisational decision making may become more complex and less accessible to communities following recent challenges.

### **4.00 RECOMMENDATIONS**

4.01 That Cabinet note the changes concerning determination of school organisation proposals.

### **5.00 FINANCIAL IMPLICATIONS**

5.01 Not applicable.

### **6.00 ANTI POVERTY IMPACT**

6.01 School organisational change is part of our work to overcome the impact of poverty.

## **7.00 ENVIRONMENTAL IMPACT**

7.01 School organisational change proposals are assessed for environmental impact.

## **8.00 EQUALITIES IMPACT**

8.01 School modernisation:

- strives to provide **equality of opportunity** for all children to receive the best possible education in Flintshire schools; and
- is focused on providing **sustainable options** for education in Flintshire that meets the needs of children and young people now and in the future.

## **9.00 PERSONNEL IMPLICATIONS**

9.01 There are no personnel implications arising directly from this report.

## **10.00 CONSULTATION REQUIRED**

10.01 School organisational change requires statutory consultation with communities.

## **11.00 CONSULTATION UNDERTAKEN**

11.01 The decision making processes in this report have been discussed and agreed with Flintshire County Council's Legal Services. The processes in other Local Authorities have been recorded.

11.02 The Cabinet Portfolio Member for Lifelong Learning has considered the requirements of the Act and supports the proposals within the Report.

## **12.00 APPENDICES**

12.01	<b>BACKGROUND PAPERS</b>	<b>LOCATION</b>	<b>WEBSITE INFO.</b>
	All documents pertaining to this project are available on the Education web pages.	WG website	<a href="http://wales.gov.uk/docs/dcells/publications/130719-school-organisation-codes-en.pdf">http://wales.gov.uk/docs/dcells/publications/130719-school-organisation-codes-en.pdf</a>

### **LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS**

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