

Jayne Bryant
Chair of Children, Young People and Education Committee
Senedd Cymru

23 January 2024

Dear Jayne,

Residential Outdoor Education (Wales) Bill

I am writing with regard to the recent written evidence paper that was provided to the Committee by the Minister for Education and Welsh Language.

It is worth noting at the outset that I fully respect the Minister's entitlement to have a view on the Bill, and the purpose of me writing today is not to question the Minister's overall position on the Bill. However, I have read the Minister's paper in detail and there are, I believe, some factual inaccuracies or misrepresentations of what the intention of the Bill is and what it does.

I thought it would therefore be helpful to write to the Committee ahead of the session with the Minister to help clarify some of those issues, and to hopefully help the scrutiny process. I am, of course, attending CYPE Committee myself on 1 February, and would be happy to explore these areas further at that time.

The need for legislation

Consideration of whether the Bill is required to deliver its stated aims is a vital piece of the scrutiny process. Unfortunately, the Minister's assertions on whether there is a need for the Bill seems to miss the core aim of the Bill, which is to make the provision of residential outdoor education a statutory requirement.

The Minister states that ‘The Bill is unnecessary as schools already have the legal powers to provide residential outdoor education if they wish’. However, the Minister also concedes in the paper that ‘It is a matter for schools as to whether they chose to provide residential outdoor education (ROE) or not. There is nothing in legislation that prevents or requires it’.

As clearly set out in the Explanatory Memorandum (EM) that accompanies the Bill, the intention of the Bill is to move ROE away from being an enrichment to the curriculum, which is often viewed as a ‘nice to have’, to being an entitlement of the education offer. The effect of the Bill is to make ROE part of the curriculum and whether primary legislation is needed must focus on this, but this does not seem to be reflected in the Minister’s paper.

Furthermore, during the Minister’s oral evidence session with the Legislation, Justice and Constitution Committee on 22 January, a specific question was asked on whether the legislation was required. The Minister’s response was unclear. At the outset of the meeting he indicated that making ROE itself compulsory could be done using existing regulation making powers, whereas making it compulsory to offer the opportunity would require legislation. At the conclusion of the meeting, when asked if he believed there is a non-statutory means of delivering the objectives of the Member in charge, he stated “not on the compulsory side of things”. There appears to be a contradiction during the course of the Minister’s evidence in Committee and a lack of consistency with what is included in the evidence paper to CYPE Committee.

As this is such a fundamental question, it is vital that there is clarity on the Minister’s position here.

The Minister’s paper also questions the Bill’s approach as to whether pupils will be compelled to attend ROE. I know that there was some discussion of this in the LJC Committee regarding whether the Bill’s purpose is to require that an offer of ROE is made to pupils or to make it a requirement of the Curriculum for Wales. The Bill does both. Pupils will be entitled to ROE and schools must provide it as part of the curriculum. However, the Bill requires that the guidance the Welsh Government issues must provide that it is not compulsory for pupils to attend ROE, for example if they really do not want to do so or it is not in their best interests.

Section 42 of the Curriculum and Assessment (Wales) Act 2021 and the associated regulations also assist in this area. I appreciate that the Minister referred to this as a “blunt instrument” so it may assist the Committee to have further information as to why the Minister makes this assessment of his own regulation making power. I

realise that cumulatively this provides pupils with a right to opt out from that aspect of the Curriculum for Wales and that may have caused some confusion but I believe the legal effect of this is clear.

Placing a statutory duty on local authorities or the Minister?

The Minister's paper, on several occasions, states that the intention of the Bill was to place a statutory duty on **local authorities** to ensure that young people receiving maintained education are provided with the opportunity to experience ROE. The paper states that because the Bill doesn't place any duties on local authorities (and instead places them on Welsh Ministers) it does not meet the purpose as set out in the EM.

I am particularly concerned that in making this assertion, the Minister has clearly based his thinking on the information contained in the original explanatory memorandum tabled at the start of the process (August 2022) and not on the Bill or the detailed Explanatory Memorandum introduced by me on 24 November 2023. At paragraph 6.3 of his paper, the Minister quotes from paragraph 3 of the EM upon introduction, which describes what my proposal was at the time of the 'leave to proceed' debate in October 2022. Upon reading the EM further, however, it would have been apparent that this changed as the Bill was developed, as I explain below.

When I entered the Ballot, my proposal had intended that the duties would be placed on local authorities. However, during the development of the Bill, and in designing the best method to deliver the main policy objectives, it was decided that the Bill should instead place a duty on the Welsh Ministers to **'ensure pupils in maintained schools are provided with residential outdoor education'** rather than on local authorities directly.

This change in how the policy objectives would be delivered is explained in the detailed EM that accompanies the Bill (see para 8 and para 117 as examples of where this is mentioned). In particular, footnote 140 on page 58 specifically explains the change in thinking. Footnote 140 states:

"Whilst not directly resulting from the consultation, a significant change to the proposals consulted is that the Bill places the duty on the Welsh Ministers to ensure pupils in maintained schools are provided with residential outdoor education rather than on local authorities as was originally set out in the consultation document. This was due to the level of detail that will need to be considered for the Bill's implementation."

Another concern is that paragraph 6.9 of the Minister's paper states that it is not appropriate to place a duty on the Welsh Ministers to provide residential outdoor education. Again, I believe this misreads / misrepresents the intention of the Bill, which actually places a duty on Welsh Ministers to **ensure it is provided**, not to provide it themselves. However, in paragraph 6.14 of the Minister's paper, there does seem to be an acknowledgement that the intention is for the Welsh Ministers to use their powers to facilitate other bodies to deliver ROE.

It is disappointing that the Minister does not seem to understand the important change in how the policy objectives are being delivered through the Bill (i.e. the deliberate intention to not place duties directly on local authorities). It is also concerning that the Minister has read the Bill as placing a duty on Welsh Ministers to deliver ROE, which it clearly does not do. To be clear, when the Welsh Ministers carry out their duty under the Bill, ROE would be included on the curriculum so at that point there would be a duty upon schools to provide ROE as part of the curriculum.

Effectiveness of the Bill

The Minister's paper makes a clear statement that the Bill is drafted in such a way that its legal effect is defective, but does not give any clear explanation as to why that is the case. If there are areas of the Bill that the Minister considers to be defective, it would be better for that to be clearly explained, so that those areas can be considered during the scrutiny process.

The paper also states that the amendments the Bill seeks to make to the Curriculum and Assessment (Wales) Act 2021 are not appropriate as they do not fit with the legislative scheme or the principles of that Act. Again, there is no explanation of why that is considered to be the case.

Guidance making powers

The Minister states that he does not consider it appropriate to use the same guidance making power which is used to issue discretionary guidance on the Curriculum for Wales (section 71 of that Act) to put a duty on the Welsh Ministers to issue guidance on Residential Outdoor Education.

In drafting the Bill, this has been considered and my understanding is that there is no legal difficulty with the Bill including a power to issue guidance on some matters (i.e. Welsh Ministers may issue guidance), and a duty to issue guidance on other matters (i.e. Welsh Ministers must issue guidance). This is not an inconsistent approach, it is simply taking a different approach for different things.

As an additional point, paragraph 6.25 of the Minister's paper makes reference to the "4-day requirement" in the context of guidance. A previous draft of the Bill that was published for consultation included reference to the course of ROE being comprised of at least 4 nights and 5 days in guidance. However, the Bill as introduced makes the duration clear on the face of the Bill and does not refer to it as part of the guidance. I am particularly concerned that in making this reference, the Minister has clearly based his thinking on a previous draft of the Bill and not the Bill as introduced.

Finance

The paper from the Minister states that the Bill will add to the financial burden on schools and local authorities. What the paper seems to omit is that one of the key aims of the Bill, as set out in Section 2, is to provide for the Welsh Ministers to pay local authorities an amount sufficient to enable the functions relating to ROE to be carried out. The intention, therefore, is that there should not be any additional financial burden on schools or local authorities.

I fully acknowledge that there may be additional costs to be met from the Welsh Government budget. The Minister has raised this in the Plenary statement following the Bill's introduction on 29 November, in LJC Committee on 22 January, and in the written paper to CYPE Committee. The Minister has continually asserted that any additional costs arising from the Bill, would need to be taken from the existing Education and Welsh Language portfolio budget.

The Bill itself, while requiring Welsh Ministers to pay local authorities a sufficient amount, does not require that to come directly through the Education and Welsh Language portfolio budget. The absolute intention of the Bill is that there should be no cut to existing education budgets, as I fully appreciate the importance of maintaining those budgets to meet the current priorities.

There are other matters raised in the Minister's paper that I do not necessarily agree with, and would be happy to explore those further with the Committee. What I have set out above are, I believe, more crucial to the Committee's scrutiny, and I hope some of the clarification I have provided will help that scrutiny.

Yours sincerely



Sam Rowlands MS

Member of the Welsh Parliament for North Wales

Copied to:

Huw Irranca-Davies, Chair of the Legislation, Justice and Constitution Committee
Peredur Owen Griffiths, Chair of the Finance Committee