

Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-05-828
Ein cyf/Our ref KW/05271/19

David John Rowlands AM
Chair - Petitions committee
National Assembly for Wales
Cardiff Bay
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SeneddPetitions@assembly.wales

12 February 2019

Dear David

Petition P-05-828 Presumption in favour of rural schools

Thank you for your letter of 1 February regarding the petition above and further correspondence from Cymdeithas yr Iaith Gymraeg. I understand that you agreed to write to me to:

- Ask what the Welsh Government's intentions are in circumstances where local authorities are considered to not have followed the requirements set out in the School Organisation Code; and
- Seek clarification about the powers you possess to intervene in decisions about school closures, including an outline of at what point, under what circumstances, you are able to do so.

The School Organisation Code (the Code) provides for anyone with an interest to express their opposition or concerns on the proposal, including the process followed, as part of the statutory consultation process.

Individuals are also able to raise objections during the subsequent objection period. The proposer must publish consultation and objection reports summarising each of the concerns raised and responding to these by means of clarification, amendment to the proposal or rejection of the concerns with supporting reasons.

The decision maker must conscientiously consider objections alongside the arguments in respect of the proposals and in the light of the factors set out in the Code. This includes the factors to be considered in respect of the proposed closure of schools designated as rural.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Where they believe that a local authority is failing to comply with the Code, individuals are open to raise a complaint using the local authority's established complaints procedures.

Individuals can also raise their concerns with the Welsh Ministers. However, the complaints process is not intended to be a substitute for the school organisation process set out in the Code and summarised above.

The Code is made under Sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013 (the 2013 Act). It imposes requirements in accordance with which relevant bodies, including local authorities and the governing bodies of maintained schools, must act. Where mandatory requirements are imposed by the Code or the 2013 Act or another statute or statutory instrument, it is stated that relevant bodies must comply with the particular provision.

It includes statutory guidance to which relevant bodies must have regard. Where guidance is given by the Code, it is stated that relevant bodies should follow this guidance unless they can demonstrate that they are justified in not doing so.

The Welsh Ministers have powers to intervene in the exercise of a local authority's education functions. This is set out in Chapter 2 of Part 2 of the 2013 Act. Section 21 of the Act details the grounds for intervention:

- GROUND 1 - The local authority has failed, or is likely to fail, to comply with a duty that is an education function.
- GROUND 2 - The local authority has acted, or is proposing to act, unreasonably in the exercise of an education function.
- GROUND 3 - The local authority is failing, or is likely to fail, to perform an education function to an adequate standard.

The Welsh Ministers have a number of powers of intervention where they are satisfied a local authority meets one or more of the grounds for intervention.

They include the following powers:

- Power to require local authority to obtain advisory services;
- Power to require performance of functions by other persons on behalf of authority
- Power to require performance of functions by Welsh Ministers or nominee
- Power to direct exercise of other education functions
- General power to give directions and take steps

The powers can be used where the Welsh Ministers are satisfied there is evidence that one or more of the grounds for intervention exist and the local authority has failed to comply with a warning notice to the Welsh Ministers satisfaction within the necessary timescale.

There is no restriction on when parents or governors can complain to the Welsh Ministers. However, in most circumstances the Welsh Ministers would have expected complainants to have exhausted the local complaints procedures and that the local authority has had an opportunity to respond to the complaint.

With regard the presumption against the closure of rural schools, the Code is not retrospective. The presumption against closure does not apply to proposals where the consultation commenced prior to the revised Code coming into force on 1 November 2018. There is no statutory requirement for a local authority to comply with provisions that were not yet in force.

Although the presumption against closure of rural schools will not apply to these proposals, proposers must nevertheless comply with the first edition of the Code. This includes ensuring that proposals for the closure of any school is robust and in the best interests of educational provision in the area.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kirsty Williams". The signature is written in a cursive style with a large initial "K".

Kirsty Williams AC/AM

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