

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to	Executive Committee Meeting
Date	November 4 2013
Subject	School Organizational Code 2013
Portfolio Holder(s)	Councillor Ieuan Williams
Lead Officer(s)	Programme Manager – School Modernisation
Contact Officer	Programme Manager –School Modernization
Nature and reason for reporting	
<p>To inform the Executive Committee of the changes in the School Organizational Code that came into force on October 1 2013 and how this will affect the Council's way of dealing with opposition to a statutory notice to close a school.</p>	

A – Introduction
<p>The new School Organizational Code came into force on 1 October 2013 and it is relevant to all school organizational proposals published in the form of a statutory notice on or after that day. A decision is taken on proposals published before 1 October 2013 in accordance with arrangements made under School Standards and Framework Act 1998 and the (2013) Code is not relevant to them.</p>

B - Considerations
<p>School Organisational Code (Document number Statutory Code: 006/2013)</p> <p>http://wales.gov.uk/topics/educationandskills/schoolshome/fundingschools/statutoryproposals/guidance-from-1-october/?lang=en</p>

C – Implications and effects		
1	Finance / Section 151	
2	Legal/Monitoring Officer	
3	Human Resources	There would be more training considerations if the option to refer opposition to a Local Decision Making Committee was chosen – training for committee members and clerk, training content and choice of training provider.
4	The Property Service	
5	Information and Communication Technology (ICT)	
6	Equality	
7	Anti-poverty and Social	
8	Communication	
9	Consultation	
10	Economic	
11	Environmental	
12	Crime and Disorder	
13	Outcome Agreements	

CH - Summary

1. Background

Under the old arrangements (School Organizational Code 2009), the process of making proposals is as follows:

- The proposer (the local authority) prepares the proposal gathering information and seeking views informally.
- The proposer undertakes statutory consultation with key groups that are stakeholders.
- The proposer analyses the responses to the consultation and decides whether the proposal should go ahead. If the proposer goes ahead with the intention, notices are issued that allow any individual or establishment to present an objection within 28 days from issuing the notice.
- If there is no objection, the proposer decides whether to continue with the proposal or not.
- If there is one objection, refer the matter to the Welsh Ministers who will announce their decision within 3 months.
- If the proposal is acknowledged, it is the proposer's statutory duty to implement it.

Even so, there were difficulties with the procedure and it was seen that there was a need for a new school organisation (partly) for the following reasons:

1. The Welsh Government's opinion was that this process takes too much time and could lead to delays when local authorities are endeavouring to make changes that would lead to making better use of the resources that are available for education.
2. As local authorities are responsible for planning and providing places in schools, the Welsh Government's feeling is that the decisions regarding planning and providing places in schools, should be made locally in the majority of cases.
3. Under the old legislation (2009), one objector who does not necessarily have a direct interest nor in a school, can cause a proposal to be directed to Welsh Ministers. The Welsh government believes that this is inappropriate.

Therefore, in order to change this procedure, the new School Organization Code was brought into existence under sections 38 and 39 of the School Standards and Organization Act (Wales) 2013. The Act was given Royal Assent on March 4, 2013.

2. Deciding on proposals

In order to simplify and speed up the procedure in accordance with points 1.1 to 1.3 above, the procedure was changed. Under the 2013 Organization Code that came into force on October 1 2013, Welsh Ministers have to approve **only the following proposals**:

- (a) Proposals that affect sixth form education; or
- (b) Proposals that have been made by someone apart from the relevant local authority e.g. school, with that local authority having presented an objection that has not been withdrawn in writing before 28 days from the end of the objection period.

At present, the Isle of Anglesey County Council's Executive Committee have the authority to make a decision to issue a statutory notice to close a school and this will not change under the School Organization Code 2013. Therefore, in accordance with 2a and 2b above, if the Isle of Anglesey County Council's Executive Committee decided to issue a statutory notice to close a primary school and opposition to that decision was received, under the new arrangements, the matter would not be referred to Welsh Ministers. Rather there are two possible options if an objection to publish a statutory notice to close a primary school is received namely:

1. Refer the matter to the Executive Committee or
2. Set up a Local Decision Making Committee.

2.1 Referring the matter to the Executive Committee

According to the School Organization Code 2013: "Where local authorities are required to approve or determine proposals which have received objections, a proposed amendment²⁰ to Schedule 2 to the Local Authority (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended) will permit the local authority's executive (*i.e. The Isle of Anglesey County Council Executive Committee*) to exercise this function. 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".

Therefore, if there is opposition to a decision to publish a statutory notice to close a primary school, **one option** is to refer the matter back to the Anglesey County Council's Executive Committee.

As the Executive Committee is a standing committee, no additional work would be required to arrange the hearing of an appeal against a decision to publish a statutory notice.

2.2 Setting up a Local Decision Making Committee

If there is a need for Anglesey County Council to approve or decide on proposal(s) under the new School Organizational Code after October 1 2013, that can be done by setting up a local decision making committee. This can be in co-operation with other regional local authority/authorities. In order to set up a 'local decision making committee', guidelines were placed in the School Organization Code (2013) regarding the following matters:

2.2.1 Size

The size of the committee would be significant in shaping its effectiveness. If it was too large, it would be unwieldy and it could be difficult to establish a consensus. If it was too small, there might be too little debate and too narrow a perspective. The suggestion in the School Organizational Code is that a committee with five members would be the ideal size.

2.2.2 Make up

The committee's make up would be important and will influence people's attitude towards it. If the intention is to emphasise its independence from the Isle of Anglesey County Council's Executive Committee, perhaps it will be necessary to 'disqualify' the executive members and anyone associated with the local authority, the proposer (if different from the local authority) or the schools to which the proposals are relevant, and it can raise doubts regarding their ability to act impartially in relation to the proposal.

As long as they are not 'disqualified', Anglesey County Council can decide to appoint committees that include elected members only, or people who are not associated with the local authority (including members of another local authority), or any combination of both.

The guidelines suggest that it would be wise for local authorities to ensure that at least one member of the committee has direct experience of working in the education sector. A member or a former member of a school's senior management team or an experienced school governor could be suitable in this regard.

If the committee includes elected members only, it is suggested in the guidelines that there should be consideration to making it more balanced from the political perspective in the way that is outlined in sections 15 and 16 of the Local Authority and Housing Act 1989. It is suggested that the local authority can recruit, train and keep a pool of suitable individuals and appoint to a committee according to need. There would be a number of advantages to this, including reducing the time that is needed to set up a Committee according to need and it would assist the

local authority to ensure that prospective committee members have received adequate training.

The guidelines say: “Local authorities could also co-operate to develop shared regional pools. This would increase the potential number of eligible and suitably experienced candidates whilst at the same time providing more opportunities for committee members to gain experience and develop expertise in making school organisation decisions. However, when appointing panels from any such regional pool, local authorities might want to ensure at least some members have specific local knowledge.”

All committee members would receive appropriate training before considering proposals, and that experienced committee members are kept abreast of any amendments to guidance and are given the opportunity of undertaking refresher training. Training need not be extensive but might look to ensure that committee members are familiar with the guidance contained in the Code and are familiar with the relevant parts of the 2013 Act. Two or more local authorities could collaborate to deliver training which, in addition to possible financial savings, could provide benefits such as the wider sharing of good practice.

As a reminder, the four main rules in the 1989 Local Authority and Housing Act regarding allocation of seats are noted here:

- (a) All seats on a committee cannot be allocated to the same political group;
- (b) The majority of seats on a committee have to be allocated to a political group if the number of persons that belong to the group are a majority of the Council members;
- (c) Conditional on paragraphs (a) and (b) above, the number of seats on the usual committees allocated to every political groups are the same as the number of all seats that the members of that group has on the Council;
- (d) Conditional on (a),(b) and (c) above, the number of seats on a committee that is allocated to all political groups is the same proportion of the seats on the committee as the number of seats that the members of that group has on the Council.

In accordance with the requirements of Local Authority Regulations (Different Arrangements) (Wales) 2007 it is a requirement to allocate committee chairmanship in order to ensure, as far as is practical, that the authority’s political balance is reflected by those chairmanships.

2.2.3 Voluntary School

If a school with a religious character that is Catholic or Church in Wales (or there is an intention for it to have such a religious character) is subject to a proposal, the Isle of Anglesey County Council can invite the Diocesan Education Board of a Church in Wales relevant diocese or the Bishop of a relevant diocese of the Catholic Church to nominate a representative to be one of the committee members. In the case of any other voluntary school that has a designated religious character, the individuals or the people who appoint the foundation governors should be invited to nominate a representative.

2.2.4 Administrative

The School Organization Code (2013) says that it would be advisable for the local decision making committee to ensure that the Isle of Anglesey County Council provides the services of a clerk. Although the clerk would not be a member of the committee, he/she can act as a source of independent advice. In order to be able to do this, the clerk would need to have a good understanding of the Code and of the relevant parts of the 2013 Act, and that he/she has received appropriate training. The local authority would need to provide appropriate legal advice to the committee as need be. The clerk should not have dealt with any part of the proposal that the committee is considering and should not have any interest in any decision that is made by the committee members.

The clerk's key tasks would include:

- making the necessary administrative arrangements for the committee;
- be an independent source of advice on procedures, the Code and the relevant parts of the 2013 Act;
- record the proceedings, decision and the reasons for it; and
- ensure notification and publication of the decision.

To enable the committee to make an informed decision, the local authority would need to send the documents outlined in the School Organization Code to the appointed clerk soon after the end of the opposition period. The committee should base its decision on this written evidence rather than try or consider new information (unless it is of the opinion that it will assist in its decision within the timetable) or consider oral observations.

As this panel would be independent, from the Executive Committee, the likelihood of overturning the original decision is greater. If the original decision was reversed, it could jeopardise the whole modernisation programme, not just a single project.

As the Local Decision Making Panel has not yet been set up, a substantial amount of work would be required to establish it so that it could hear an appeal against a decision to publish a statutory notice.

3. Conclusion

It will therefore be necessary to decide on which procedure to follow (option 1 or 2 below) in a situation where opposition to a decision by the Isle of Anglesey County Council's Executive Committee to issue a statutory notice to close a primary school is received under the new School Organization Code that came into force on October 1 2013:-

1. Refer the matter to the Executive Committee or
2. Set up a Local Decision Making Panel

D -Recommendation

The Executive Committee is asked to decide on which procedure to follow in a situation where opposition is received to a decision by Anglesey County Council's Executive Committee to publish a statutory notice to close a primary school under the new School Organization Code that came into force on October 1 2013 namely either:

- a. Refer the matter to the Executive Committee or
- b. Set up a Local Decision Making Committee.

In a situation of receiving opposition to a decision by Anglesey County Council's Executive Committee to issue a statutory notice to close a primary school under the new School Organization Code that will come into force on October 1 2013, it is recommended that :

The matter should be referred to the Executive Committee.

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Date **October 17 2013**

Appendices:

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Background papers

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