

Draft School Organisation Code

Consultation response form

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Responses should be returned by **16 January 2013** to:

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or completed electronically and sent to:

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Question 1: Section 1 – Development and consideration of proposals

This section sets out the factors to which relevant bodies should have regard in developing and delivering school organisation proposals. Are there any changes you would like to suggest?

The British Humanist Association (BHA) is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have around 30,000 members and supporters, and over 70 local and special interest affiliates.

There are a number of areas of the proposed Code which we think are commendable, for example:

- The reference, on page 3, to the United Nations Convention on the Rights of the Child (UNCRC). We are firm supporters of children's rights, and would like to see the UNCRC incorporated into UK law. To see the UNCRC affirmed at the top of this document is very welcome.
- Section 1.12's recognition that all categories of school are of equal status, and that any change in category must have identifiable benefits.

However, there are a few areas we would like to see strengthened.

School closures

First of all, we are concerned by page 5's statement that '*relevant bodies **should** have regard to... where a school with a designated religious character is proposed for closure, the effect that this will have on accessibility to that form of provision, balanced with the need for efficient provision; (In some areas it may not be compatible with the cost effective provision of education to continue to maintain both faith and non-faith schools, but proposals to change the balance of provision **should** wherever possible reflect the balance of demand.)*'

We believe the presumption should lie the other way around, namely that where a school without a designated religious character is proposed for closure, the effect that this will have on accessibility to inclusive provision should be considered. This statement, as currently drafted, seems to clash with the statement on page 8, that '*There is no presumption in favour or against the closure of any type of school. The prime purpose of schools is the provision of education and any case for closure should be robust and in the best interests of educational provision in the area.*'

A similar preference for not closing religious schools also appears in the English school organisation guidance. This led to the ludicrous situation in 2011 whereby Isle of Wight Council decided to close one of the three primary schools on the island, these being a Catholic school, a Church of England school and a community school. The Council's preference was to close the inclusive school, because the guidance advised against reducing the

proportion of religious places.¹ This was plainly ludicrous; when the matter was subsequently debated in the House of Lords, the schools minister Lord Hill agreed that this issue needed further consideration.² The community school eventually avoided closure by converting to an Academy.³

As the Code is currently drafted, a similar incident could well occur in Wales. However, this would be unreasonable on those in a given area who are of a different faith, or of no faith; because while religious schools seek to cater predominantly to adherents of one particular religion, schools with no religious character seek to cater equally to those of all religions or beliefs. It is for this reason that the presumption should lie in favour of protecting inclusive education which is equally accessible to all (including Catholics and Anglicans), and not protecting faith-based education.

Community cohesion

In section 1.6, we believe that the importance of maintaining community cohesion should be referred to as a factor that should be considered. We support the Accord Coalition's response to this consultation, which eloquently sets out the importance of considering the issue, and on referring to paragraph 1.6, says that including community cohesion 'would remove ambiguity, require that all parties take community cohesion seriously, and ensure relevant bodies evaluate the impact of a school or proposed school's policies and ethos.'

Question 2: Section 2 – Changes which require proposals

This section sets out the proposals which will require statutory procedures if the Bill is approved. Is there anything that you believe requires further clarification?

In section 2.1, it currently says, '*Note that it is not possible for VA, VC or foundation schools with a designated religious character to become a community school through a change of category proposal. Community schools are not permitted to have a religious character and schools with a religious character are not permitted to lose that character.*'

We believe this section needs editing to make clear that VA, VC and foundation schools without a religious character cannot acquire such a character (and similarly, those with a religious character cannot lose or change it). Perhaps this section could be written as follows (taking the new text directly from statute):

'Note that it is not possible for VA, VC or foundation schools with a designated

¹ BHA, 'Isle of Wight community school threatened with closure because of need to maintain "the proportion of denominational places"', 21 July 2011: <http://humanism.org.uk/2011/07/21/news-856/>

² Debate of the Education Act 2011, Lords Report stage, 26 October 2011: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111026-0001.htm#11102645001188>

³ BHA, 'Isle of Wight community school's avoiding closure a "victory for inclusive education"', 19 October 2011: <http://humanism.org.uk/2011/10/19/news-856-2/>

religious character to become a community school through a change of category proposal, because Community schools are not permitted to have a religious character. Additionally, no alteration may be made to a maintained school that changes the religious character of the school or causes a school to acquire or lose a religious character.'

Question 3: Section 3 – Consultation

This section sets out the consultation procedures which will become statutory if the Code is approved together with general guidance on consultation. Are there any changes you would like to suggest?

In section 3.1, we believe it should be made clear that proposers '**must**' follow the various requirements on consultations which have been established by case law (not, merely, that they 'should').

One of the requirements is given as that the proposer should '*include sufficient reasons for particular proposals to enable intelligent consideration*'. In fact, the case law is slightly stronger than this: '*The obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response.*⁴ This means not just providing reasons for the proposals, but also other information which is required to make an intelligent response.

In section 3.2, in 'Description of benefits', 'Details of affected schools' or 'Consultation details', we would like to see added a statement along the lines of 'If the proposals are for a school with a religious character to change category, or for a school to close and re-open with a change, acquisition or loss of religious character, a description of any proposed changes to admissions, employment, curriculum and governance policies, as well as any new powers the school gains to change its policies in these areas.'

As things stand, it is not explicitly required by the Code that this information is provided. All too often, the BHA sees Voluntary Controlled schools consult on becoming Voluntary Aided schools, without disclosing the fact that this increases the number of Diocesan places on the governing body, or the fact that this allows the school to religiously select in admissions and for all teaching staff. Sometimes, the school is not just failing to disclose the fact that it is gaining these powers, but is also failing to disclose the fact that it intends to use them. Similarly, community schools sometimes close and re-open with a religious character, but fail to disclose the changes in the above areas of doing this. It seems to us that this lack of information clashes with the requirement, established through case law, that proposers provide sufficient information to enable intelligent responses.

Question 4: Section 4 – Publication of statutory proposals

⁴ Case law cited at David Wolfe, 'What are the general legal requirements for consultation?', 19 September 2011: <http://davidwolfe.org.uk/wordpress/archives/268>

This section sets out the publication requirements which will become statutory if the Code is approved, together with general guidance. Are there any changes you would like to suggest?

In section 4.3, for proposals for a new school or for alteration of a school, we request that something along the lines of the following be added: 'If the school is to have a religious character, a description of any religious selection in admissions, employment and governance.'

As discussed in the previous question, with reference to section 3.2, as things stand, all too often this information is not provided, and it seems to us that this lack of information clashes with the requirement, established through case law, that proposers provide sufficient information to enable intelligent responses.

Question 5: Section 5 – Determining proposals

This section a) sets out procedures for the determination of proposals which will become statutory if the Code is approved, b) lists the categories of objectors which will become statutory if the Bill is approved together with other legislative requirements introduced in the Bill, and c) provides general guidance on determining proposals. The determination process, including the categories of objectors and the establishment of local determination panels, appear in the Bill and will be statutory. We are therefore seeking your views in respect of the accessibility of the information. Is there anything in this section in relation to the requirements of the Bill that you believe requires further clarification, or are there any changes you would like to suggest to the requirements of the Code or the general guidance?

With regards to membership of LDPs, the BHA is aware that on 15 January they were removed from the Bill; however, we had already drafted the below response, and decided to include it in order to lodge our concern about what is proposed in this consultation.

There is a fundamental conflict between the requirement, on the one hand, that

*'any person who has had a relevant connection with... the Proposer... or the school to which the proposals relate... **must not** form part of a LDP... A relevant connection is one which might raise doubts over their ability to act impartially regarding the proposal',*

and the requirement, on the other hand, that

*'Where a school with a designated Church in Wales or Roman Catholic religious character (or which is intended to have such a religious character) is the subject of a proposal, the LDP **must** invite the Diocesan Board of Education for the relevant diocese of the Church in Wales or the Bishop of the relevant Roman Catholic Church diocese to nominate a representative to be one of the 5 members of the LDP. In the case of any other voluntary school with a designated religious character, the person or persons by whom the*

*foundation governors are appointed **must** be invited to nominate a representative.'*?

Surely a Diocese or other religious organisation, if proposing a school, has a fundamental interest in appointing a representative who will support that proposal? This seems to us to be a conflict of interest of the nature described in the first of the two preceding statements. In addition, if it is genuinely a good idea for a religious organisation to establish a school, in meeting all the requirements set out in section 1, then this should be something which could be recognised by an LDP appointed along secular lines; while if a proposal for a religious school has been made against the wishes of the relevant Diocese or religious body, then as that body would be a category 1 objector, it would be able to force the proposals to be considered by the Welsh Ministers, and not by the LDP.

It seems to us that this conflict of interest makes it impossible for the Diocese or religious organisation to nominate any suitable representative; as a consequence, it will always be the case that *'If no nominee is forthcoming, the local authority **must** record that and appoint, instead, a member to the LDP.'* As a consequence, this paragraph of the Code should, for simplicity, be removed.

Question 6: Section 6 – Implementing proposals

This section sets out the implementation procedures which will become statutory if the Bill is approved. Are there any changes you would like to suggest?

No comment.

Question 7: Section 7 – The closure of a school with fewer than 10 registered pupils

This section sets out the procedures for the closure of schools with fewer than 10 registered pupils, which will become statutory if the Bill is approved, and the requirements which will become statutory if the Code is approved. Is there anything in relation to the Bill provisions that you believe requires further clarification, or are there any changes you would like to suggest to the Code provisions?

No comment.

Question 8: Section 8 – Proposals by the Welsh Ministers to rationalise schools places; Section 9 – Proposals by the Welsh Ministers for regional provision for special educational needs; Section 10 – Proposals by the Welsh Ministers to restructure sixth form education; Section 11 – Governing body notice to discontinue a foundation or voluntary school

These sections set out a) the Welsh Ministers' powers to bring forward school organisation proposals and impose certain requirements on them in relation to the exercise of those powers and b) the power of a foundation or voluntary school governing body to give notice of the school's closure. Is there anything

that you believe requires further clarification or are there any changes you would like to suggest to the Code provisions?

No comment.

Question 9: Annex A – Illustrative flow chart for statutory proposals; Annex B – Examples of statutory notices; Annex C – Consultation document template; Annex D – Community impact and Welsh-medium impact assessments

Are you content with the information provided in these annexes or would you like to suggest any changes?

In the examples in Annexes B and C, we would like to see it be a requirement for proposers of schools with a religious character to detail any religious selection employment, admissions, or governance, and any faith-based aspects of the curriculum; as per our response to questions 3 and 4, it seems to us that a lack of this information clashes with the requirement, established through case law, that proposers provide sufficient information to enable intelligent responses.

Question 10

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Please enter here:

No further comments.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

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