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# School Organisation Code



## Statutory Code

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# School Organisation Code

<b>Audience</b>	Local authorities; governing bodies of maintained schools; diocesan authorities; and Estyn.
<b>Overview</b>	<p>The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code.</p> <p>The Code imposes requirements in accordance with which relevant bodies (the Welsh Ministers, local authorities, governing bodies and other promoters) must act. It also includes practical guidance to which relevant bodies must have due regard and sets out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and by those responsible for determining proposals.</p>
<b>Action required</b>	See above.
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<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales@gov.uk">www.wales@gov.uk</a>
<b>Related documents</b>	School Standards and Organisation (Wales) Act 2013; <i>Defining schools according to Welsh medium provision (2007)</i> ; <i>Measuring the capacity of schools in Wales</i> Welsh Government Circular No: 021/2011 (2011).

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## Summary

This Code on School Organisation ('the Code') is made under Sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013 ('the 2013 Act').

Section 38 requires the Welsh Ministers to issue a Code that may impose requirements and include guidelines in respect of school organisation on the following (known collectively in this Code as "relevant bodies"):

- the Welsh Ministers;
- local authorities;
- the governing bodies of maintained schools<sup>1</sup>; and
- the promoters of proposals to establish voluntary schools.

The Code comes in to force on 1 October 2013 and will apply in respect of all school organisation proposals published by way of statutory notice on or after that day. Proposals published before 1 October 2013 will be determined in accordance with the arrangements made under the School Standards and Framework Act 1998 and the Code does not apply to them.

The Code contains the following elements:

1. It imposes requirements in accordance with which relevant bodies (or persons exercising a function for the purpose of the discharge, by a local authority or the governing body of a maintained school, of functions in Part 2 (changes which require proposals)) must act. Failure by a relevant body to comply with the requirements set out in this Code may result in a complaint to the Welsh Ministers or to the Public Services Ombudsman for Wales. Where mandatory requirements are imposed by the Code or by the 2013 Act or another statute or statutory instrument, it is stated that the relevant bodies **must** comply with the particular provision. Where practices are prohibited, it is stated that the relevant bodies **must not** use this practice.
2. It includes statutory guidance to which relevant bodies **must** have regard and sets out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and by those responsible for determining proposals. 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.
3. It provides a description of the statutory requirements set out in the 2013 Act.

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<sup>1</sup> The categories of maintained schools in Wales are community, voluntary controlled, voluntary aided, foundation and community special.

The Code builds on good practice which already exists amongst local authorities and others, but does not aim to give exhaustive guidance on all aspects of school organisation. Local authorities and others will need to ensure that in carrying out their school organisation functions they act at all times in ways which are reasonable and founded on the interests of learners.

This Code supersedes any guidance to be found in Welsh Government Guidance Circular No: 021/2009 school organisation proposals, National Assembly for Wales Circular 9/99: Organisation of School Places, and National Assembly for Wales Circular No: 48/2004 Guidance Accompanying the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004.

The Code is primarily designed for the use of the relevant bodies but all those with an interest in school organisation matters may also find it useful.

# 1. Development and consideration of proposals

## 1.1 Key background principles and policies

The planning and development of effective school organisation proposals is crucial to the Welsh Government's goal of transforming education in Wales and providing better educational outcomes.

Relevant bodies **should** ensure that proposals comply with and support national policies and overarching aims, in particular the Welsh Government's commitment to increase school effectiveness, and narrow inequalities in achievement between advantaged and disadvantaged areas, groups and individuals.

Amongst the overarching principles and policies which **should** be taken into account by relevant bodies in developing school organisation proposals are the following:

- United Nations Convention on the Rights of the Child;
- A living language: a language for living – Welsh Language Strategy 2012-17;
- Welsh- medium Education Strategy;
- One Wales: One planet, a new sustainable development scheme for Wales May 2009 or any successor strategy;
- Child Poverty Strategy for Wales (issued February 2011 Information document number 95/2011), or any successor strategy;
- Faith in Education.

In addition, when developing school organisation proposals, the local plans to which relevant bodies **should** have regard include the following:

- Local plans for economic or housing development;
- Welsh in Education Strategic Plans (made under part 4 of the 2013 Act);
- Children and Young People's Plans (or successor plans);
- 21<sup>st</sup> Century Schools – Capital Investment Programme and the relevant wave of investment.

Finally, relevant bodies **should** have regard to the following Welsh Government guidance on related matters:

- Learner Travel Operational Guidance - April 2009;
- Measuring the capacity of schools in Wales, Circular No: 021/2011.



## 1.2 Factors to be taken into account in preparing, publishing, approving or determining school organisation proposals

The following paragraphs set out the factors which **should** be taken into account by relevant bodies when exercising their functions of preparing and publishing school organisation proposals, or approving/determining them. Paragraphs 1.3 to 1.6 are applicable in the case of all proposals.

## 1.3 Quality and standards in education

Relevant bodies **should** place the interests of learners above all others. With reference to the key questions of the Office of Her Majesty's Chief Inspector of Education and Training in Wales (Estyn), they **should** give paramount importance to the likely impact of the proposals on the quality of:

- outcomes (standards and wellbeing);
- provision (learning experiences, teaching, care support and guidance, and learning environment);and
- leadership and management (leadership, improving quality, partnership working and resource management)

at the school or schools which are the subject of the proposals and at any other school or educational institution which is likely to be affected. Relevant bodies **should** pay particular attention to the impact of the proposals on vulnerable groups, including children with Special Educational Needs (SEN).<sup>2</sup>

Relevant bodies **should** also consider the ability of the school or schools which are the subject of the proposals to deliver the full curriculum at the foundation phase and each key stage of education. This consideration **should** include the quality of curriculum delivery and the extent to which the structure or size of the school is impacting on this.<sup>3</sup>

Where proposals involve the transfer of learners to alternative provision there **should** normally be evidence<sup>4</sup> that the alternative would deliver outcomes and offer provision at least equivalent to that which is currently available to those learners (including learners with SEN). Proposers **should** ensure that the disruption to learners is minimised.

In assessing the impact of proposals on quality and standards in education and how effectively the curriculum is being delivered, relevant bodies **should** consider any relevant advice from Estyn, refer to the most recent Estyn reports or other evidence derived from performance monitoring, and take into consideration any other generally available information available on a school's effectiveness.

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<sup>2</sup> The term Special Educational Needs (SEN) may in future be replaced by Additional Needs (AN).

<sup>3</sup> Primary legislation sets out the statutory aims of the school curriculum in Wales at section 99 of the Education Act 2002.

<sup>4</sup> Advice from Estyn might reasonably be judged as evidence in relation to alternative provision which is brand new.

## 1.4 Need for places and the impact on accessibility of schools

Local authorities **must** ensure that there are sufficient schools providing primary and secondary education for their area. Schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education<sup>5</sup>. In order to fulfil these duties, local authorities **must** ensure that they plan thoroughly and engage fully with relevant partners, including the appropriate religious bodies<sup>6</sup> for schools serving their area which have a designated religious character.

In the light of the above, relevant bodies **should** have regard to the following factors:

Where a school closure<sup>7</sup>, reduction in capacity or age range contraction is proposed:

- whether alternative school-based provision will have sufficient capacity and provide accommodation of at least equivalent quality, for existing and projected pupil numbers;

*In considering proposals relevant bodies **should** have regard to the relevant Building Regulations and associated Building Bulletins, and to the ‘Welsh Government’s circular on ‘Measuring the capacity of schools in Wales’ (Circular No: 021/2011). In addition, the Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools **must** have access. Statutory proposals **should** ensure that these standards are met.*

- with reference to the nature of the schools subject to proposals, whether the alternative school-based provision is sufficient to meet existing and projected demand for schools of the same:
  - a. language category as set out in “Defining schools according to Welsh medium provision” Welsh Assembly Government Information document No: 023/2007 (Information document No 023/2007); and
  - b. (if relevant) designated religious character;

*Proposals **should** ensure that the balance of school provision reflects the balance of demand. This means that where school provision is being reduced or removed, alternative school provision of the same nature (language category or, if relevant, religious character), wherever possible, **should** remain available and accessible to pupils in the local area.*

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<sup>5</sup> Section 14 of the Education Act 1996.

<sup>6</sup> An appropriate religious body is, in the case of a Church in Wales or Roman Catholic school, the appropriate diocesan authority, or in the case of other schools, the body representing the religion and religious denomination stated in relation to the school in an order made under section 69(3) of the School Standards and Framework Act 1998.

<sup>7</sup> Any reference to ‘school closure’ included in this document means the discontinuance of a maintained school as set out in section 40 of the 2013 Act

*However in some areas it may not be compatible with the cost effective provision of education to continue to maintain access to schools of the same nature.*

*In all cases, existing pupils at a school where provision is being reduced or removed **must** be able to continue receiving an education that provides at least equivalent standards and opportunities for progression in their current language medium. Specific transition arrangements may be necessary in order to achieve this.*

*Where proposals affect schools where Welsh is a medium of instruction (for subjects other than Welsh) for some or all of the time, local authorities **should** carry out a Welsh Language Impact Assessment.*

- the nature of journeys to alternative provision and resulting journey times for pupils, including SEN pupils; in particular whether primary school pupils will have one-way journeys in excess of 45 minutes or secondary school pupils one way journeys of over an hour;

*Arrangements for accessing the alternative provision **should** encourage sustainable transport; and they **should** address the possible effect of any transport difficulties on pupils' engagement with and attendance at school. Likely walking or cycling routes for safety and accessibility **should** be assessed prior to bringing forward proposals.<sup>8</sup>*

Where a new school, increase in capacity or age range expansion is proposed;

- that there is evidence of current or future need/demand in the area for additional places, with reference to the school or proposed school's language category, designated religious character, and the gender intake (i.e. co-educational/single sex);

*The demand for additional provision of any type in an area **should** be assessed and evidenced (In the case of Welsh medium provision this would include an assessment of the demand for Welsh Medium education conducted in accordance with any regulations made under section 86 of the 2013 Act).*

- whether proposals will improve access for disabled pupils in accordance with requirements under the Equality Act 2010.

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<sup>8</sup> Paragraphs 1.46 – 1.48 of the Welsh Government Learner Travel Operational Guidance - April 2009.

## 1.5 Resourcing of education and other financial implications

It is important that funding for education is cost effective. Relevant bodies **should** take into account the following factors in relation to the resourcing of education:

- Whether proposals will ensure a fairer and more equitable distribution of funding between mainstream schools within the local authority's area.

*Whilst some variation in the per capita funding provided to schools is to be expected, inefficient patterns of school organisation can result in uneven and unfair funding patterns where some schools receive a disproportionate share of funding at the expense of pupils attending other schools in the area. Proposals **should not** exacerbate such funding differences. Rather, wherever possible, they **should** contribute towards establishing a more equitable pattern of school funding.*

- what effect proposals will have on surplus provision in the area;

*Some spare places are necessary to enable schools to cope with fluctuations in numbers of pupils, but excessive numbers of unused places that could be removed mean that resources are tied up unproductively.*

*Where there are more than 10% surplus places in an area, local authorities **should** review their provision and **should** make proposals for school reorganisation if this will improve the effectiveness and efficiency of provision. This is especially important where individual schools, have "significant" levels of surplus places. A significant level of surplus provision is defined as 25% or more of a school's capacity (as defined in Circular 21/2011) and at least 30 unfilled places.*

*It **should not** normally be necessary to provide additional places at schools when there are others of the same type with surplus places within reasonable distance. However, proposals to increase the number of places in response to demand for a particular type of provision, e.g. Welsh medium, may still be appropriate; particularly if effective provision of school places is planned for the local authority area.*

- whether proposals form part of the local authority's 21<sup>st</sup> Century Schools Investment Programme and contributes to the delivery of sustainable schools for the 21<sup>st</sup> Century and to the better strategic management of the school estate through the removal of maintenance backlogs and school buildings which are in efficient or in poor condition.

Relevant bodies **should** also take into account the following factors in relation to finance:

- the recurrent costs of proposals over a period of at least 3 years and whether the necessary recurrent funding is available;

- additional transport costs incurred as a result of proposals;

*Proposers **should** take into account the requirement on local authorities to provide free transport provision under the Learner Travel (Wales) Measure and **should** seek the advice of Regional Transport Consortia in relation to the impact the proposal might have on associated transport costs and their affordability.*

- the capital costs of proposals and whether the necessary capital funding is available;
- the scale of any projected net savings (taking into account school revenue, transport and capital costs);

*In relation to proposals where substantial upfront capital investment is required (for example to support a substantial remodelling, refurbishment or a new build project), the costs and savings of the proposals **should** be calculated over the lifespan of the relevant building, and compared against the costs and savings associated with the maintenance of the status quo. Where a local authority's business case submission for funding under the 21<sup>st</sup> Century Schools Programme has been approved by the Welsh Government in line with the HM Treasury 5 case business model, this would provide sufficient evidence of the proposal's cost effectiveness in terms of capital expenditure;*

- whether, without the proposals, the schools affected would face budget deficits;
- whether any savings in recurrent costs will be retained in the local authority's local schools' budget; and
- whether the proceeds of sales (capital receipts) of redundant sites are to be made available to meet the costs of the proposal or contribute to the costs of future proposals which will promote effective management of school places.

*In general, local authorities **should** look to recycle assets from any surplus school buildings and sites in their ownership into the overall improvement of their schools estate rather than allocate those proceeds to projects outside the education portfolio, although these decisions ultimately rest with local authorities.*

## 1.6 Other general factors

Relevant bodies **should** take into account the following general factors:

- what impact proposals will have on educational attainment among children from economically deprived backgrounds;

- any equality issues, including those identified through equality impact assessments; and
- whether the school or schools involved are subject to any trust or charitable interests which might be affected by the proposals, for example in relation to the use or disposal of land.

*Proposals which affect charities **must** be consistent with charity law or the stated purpose of the charitable trust.<sup>9</sup> Advice **should** be sought from the Charities Commission or the Welsh Ministers (as the Principal Regulator of governing bodies which are charities) where there is any uncertainty.*

## 1.7 Specific factors in the consideration of school closures

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. Nevertheless, in some areas, a school may also be the main focal point for community activity, and its closure could have implications beyond the issue of the provision of education. This may be a particular feature in rural areas if school buildings are used as a place to provide services to the local community.

The case prepared by those bringing forward proposals **should** show that the impact of closure on the community has been assessed through the production of a **Community Impact Assessment**, and how any community facilities currently provided by the school could be maintained.

When considering whether a closure is appropriate, special attention **should** be given to the following:

- whether the establishment of multi-site schools might be considered as a means of retaining buildings, or the reasons for not pursuing this option;
- whether alternatives to closure, such as clustering, collaboration or federation with other schools, might be considered (taking account of the scope for use of ICT links between school sites) or the reasons for not pursuing these as an alternative;
- whether the possibilities of making fuller use of the existing buildings as a community or an educational resource could be explored;

(Local authorities **should** consider whether it would be feasible and economical to co-locate local services within the school to offset the costs of maintaining the school);

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<sup>9</sup> All foundation and voluntary school governing bodies are charities under section 23 of the Schools Standards and Framework Act 1998 and community school sites may also be subject to charitable interests.

- the overall effect of a closure on the local community (including the loss of school based facilities which are used by the local community), particularly in rural areas or those receiving funding as part of regeneration activity; and
- how parents' and pupils' engagement with the alternative school and any facilities it may offer could be supported (e.g. how pupils; particularly any less advantaged pupils) will be helped to participate in after school activities).

Although under the 2013 Act the requirement to consult does not apply to proposals to discontinue small schools with fewer than 10 pupils at the preceding January census point<sup>10</sup> local authorities and governing bodies bringing forward such proposals **must** still take into account the factors set out in this Code.

## **1.8 Specific factors to be taken into account for proposals to add or remove nursery classes**

Relevant bodies **should** take into account the following specific factors:

- the standard of nursery education and the sufficiency of accommodation and facilities offered, both in the classroom and outdoors, and the viability of any school that wishes to add nursery places;
- whether there is a need for additional nursery places in the area;
- the levels of demand for certain types of nursery education e.g. Welsh medium or provision with a religious character;
- the effect of the proposals on other institutions, including private and third sector providers; and
- the extent to which proposals will integrate early years education with childcare services or are consistent with an integrated approach.

## **1.9 Specific factors to be taken into account for proposals to reorganise secondary schools or to add or remove sixth forms**

Relevant bodies **should** take into account the following specific factors:

- whether proposals will lead to an improvement in the educational or training achievements of persons who are above compulsory school age but below the age of 19;
- whether proposals will contribute to an appropriate range of relevant courses and qualifications and high quality, employer informed, vocational learning routes targeted at pupils of all abilities, whilst maintaining GCSE, AS/A level and other established courses, as required under the Learning and Skills (Wales) Measure 2009 for 14-19 year old learners;

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<sup>10</sup> Section 56 of the 2013 Act defines a 'small school', for the purposes of deciding whether consultation is required, as a school with fewer than 10 registered pupils on the third Tuesday in January immediately preceding the date on which the proposals are made.

- whether proposals are likely to lead to increased participation in learning by pupils beyond compulsory school age, taking into account transport issues and costs to the learner and others, the affordability of such costs, and the likelihood of learners being willing to travel;
- the extent to which proposals contribute to the 14-19 agenda taking account of the views of local 14-19 networks and learning partnerships;
- the effect of proposals on 11-16 provision in schools;
- how proposals would affect the viability of institutions already providing good-quality post-16 provision, including school sixth forms, Further Education Institutions and private training organisations;
- how proposals might affect the sustainability or enhancement of Welsh medium provision in the local 14-19 network and wider area and promote access to availability of Welsh medium courses in post-16 education;
- the extent to which proposals will provide additional learner benefits compared with the status quo and other tenable options for post-16 organisation; and
- how proposals might affect the discretionary transport provision a local authority may provide to learners<sup>11</sup> above compulsory school age.

### **1.10 Specific factors to be taken into account for proposals to increase provision in voluntary schools or establish a new voluntary school**

Relevant bodies **should** take into account whether:

- the local authority has confirmed that it will meet its liability;
- the governing body of a voluntary aided school will be able to meet its financial responsibilities for repairs and capital work; and
- the proposed land tenure arrangements give the school sufficient security of occupation of the site.

*Where land tenure arrangements are not settled those determining proposals might indicate that they are minded to approve the proposals subject to satisfactory resolution of those issues. Such a decision could be appropriate where the promoters are unwilling to incur legal expenses to resolve the tenure issue until they know that there is a strong likelihood that the proposals will be approved.*

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<sup>11</sup> Section 6 of the Learner Travel (Wales) Measure 2008 gives a local authority the power to provide discretionary transport where they think fit to facilitate the travel of learners. Paragraphs 2.1 – 2.8 of the Welsh Government Learner Travel Operational Guidance – April 2009 provides further guidance on this provision.



### **1.11 Specific factors in the consideration of proposals for the change of language medium**

Relevant bodies **should** take into account the following specific factor:

- the extent to which existing provision by the local authority of education in the medium of English and/or Welsh exceeds or falls short of demand or projected demand from parents for that type of provision, and the contribution the proposal would make to remedying that situation.

### **1.12 Specific factors in the consideration of proposals for the change of school category**

Relevant bodies **should** take into account the following specific factors:

- all categories of school - community, foundation, voluntary controlled or voluntary aided - are of equal status;
- all permissible proposals to change the category of a school will be considered on their individual merits<sup>12</sup> ; and
- whether, any benefits can be identified.

*Changing category has the potential to cause disruption to the running of the school and/or place added burdens on the governing body and/or add complexity to school reorganisation or admissions. Therefore, there **should** be a presumption against changes where benefits cannot be identified.*

- Whether any trust deed relating to the school allows for the change of category proposed. If there is any doubt, or if a variation in the trust deed is clearly necessary, proposers **should** make early contact with the Charity Commission.

### **1.13 Additional factors to be taken into account in preparing, publishing, approving or determining proposals for the reorganisation of SEN provision**

#### **Policies and principles**

The principles and plans set out elsewhere in this Code **should** be taken into account in the consideration of proposals for the reorganisation of maintained special schools and specialist resource bases in mainstream schools.

Relevant bodies **should** consider how proposals fit with the local authority's plans for promoting inclusion (i.e. providing for a higher proportion of pupils with SEN to attend

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<sup>12</sup> Schools are not permitted to change their category to foundation and schools with a religious character may not become community schools.

mainstream settings) wherever that is appropriate in meeting a child or young person's individual needs, and with its overall strategy for ensuring adequate provision for the full range of SEN.

Relevant bodies **should** have regard to the factors set out below in relation to proposals affecting special schools and specialist resource bases in mainstream schools.

### **Standards of provision**

In addition to the usual considerations in relation to standards of provision, relevant bodies **should** consider:

- whether proposals will improve standards of accommodation for pupils with SEN, including building accessibility;
- how proposals will address any health, safety and welfare issues;
- how proposals, where appropriate, will support increased inclusion; and
- the impact of proposals on other SEN provision within the immediate and wider local authority area including out of county where appropriate.

### **Need for places and the impact on accessibility of schools**

In addition to the considerations listed in 1.4, relevant bodies **should** consider:

- whether there is a need for a particular type of SEN provision within the area;
- whether there is surplus SEN provision within the area;
- whether SEN provision would be more effective or efficient if regional provision were made; and
- the impact of proposals on the transportation of learners with SEN.

### **Other factors**

Relevant bodies **should** consider:

- how changes to SEN provision in schools are likely to impact on all other services provided in an area for pupils with disabilities and/or SEN.

## **1.14 Factors to be taken into account in approving/determining school organisation proposals**

When approving or determining proposals, relevant bodies:

- **must** consider whether there are any other related proposals;

- **must** ensure that the statutory consultation has been conducted in accordance with this Code (the requirement to consult does not apply to proposals to discontinue a school which is a small school);
- **must** ensure that the proposal has been published in accordance with this Code and the notice contains all the required information;
- **must** consider the consultation document and consultation report;
- **must** consider the objections and the objection report and any responses to the notice supporting the proposals;
- **should** consider, in the case of a proposal to change the category of a school, whether, there are any benefits. If no benefits can be identified, such proposals **should not** be approved; and
- **must not** approve change of category proposals where a variation in the trust deed is necessary but has not yet taken place.

## 2. Changes which require proposals

Statutory procedures are usually necessary to make significant changes to schools. The procedures are designed to enable changes to be made where they are considered necessary, but in a way which protects the interests of learners and allows interested parties the opportunity to have their say in the process.

### 2.1 Elements of school reorganisation that require the publication of proposals

Proposals **must** be published for the following elements of school reorganisation:

1. the opening of a maintained school (including a special school);
2. the closing of a maintained school (including a special school); and
3. a change in a school's category so that it becomes a school of another category<sup>13</sup>.

#### Proposals to change the category of a school

Category of school	Can become	Proposer
Community school*	VA or VC	Governing Body (GB)
Voluntary Aided (VA) school*	Community or VC	GB
Voluntary Controlled (VC) school*	Community or VA	GB
Foundation school*	Community, VA or VC	GB

\*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. Similarly community schools cannot become VA or VC schools with a designated religious character. Community schools are not permitted to have a religious character and no alteration may be made to a maintained school that changes its designated religious character or causes it to acquire or lose a designated religious character.

### 2.2 Regulated alterations

In addition, proposals **must** be published for the following significant alterations (known as “regulated alterations”) to schools:

- the transfer of any school to a new site or sites unless a main entrance of the school on its new site or sites would be within 1.609344 kilometres

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<sup>13</sup> Except to foundation – the 2012 Act prohibits schools from changing their category to foundation.

(one mile) of any of a main entrance of the school on its current site or sites;

- changing a school (including a special school) from single-sex to mixed or vice-versa. (A school is treated as admitting pupils of one sex only if the admission of pupils of the other sex is limited to pupils over compulsory school age, and does not exceed 25% of the age group in question);
- a change in the age range of a school (including a special school) by a year or more (not including the introduction or discontinuation of part-time or full-time Further Education or changes to provision for pupils over compulsory school age who are repeating a course of education completed before they reached the end of compulsory school age);
- the introduction of, or ending of, sixth form provision at a school;
- the alteration of the medium of instruction of a class of pupils in an age group or groups (including nursery pupils) at a primary school (or primary education in relation to middle or special schools) which falls within the description in column 1 of the table below so that it falls within the description in the corresponding entry in column 2.

<b>Column 1</b>	<b>Column 2</b>
At least 20% but no more than 80% of the teaching is conducted through the medium of English.	An increase or decrease of more than 20% in the teaching which is conducted through the medium of Welsh.
At least 20% but no more than 80% of the teaching is conducted through the medium of Welsh.	An increase or decrease of more than 20% in the teaching which is conducted through the medium of English.
More than 80% of the teaching is conducted through the medium of English, and some teaching is conducted through the medium of Welsh.	An increase of more than 10% in the teaching which is conducted through the medium of Welsh.
More than 80% of the teaching is conducted through the medium of Welsh, and some teaching is conducted through the medium of English.	An increase of more than 10% in the teaching which is conducted through the medium of English.
No teaching is conducted through the medium of Welsh.	More than 10% of the teaching is conducted through the medium of Welsh.
No teaching is conducted through the medium of English.	More than 10% of the teaching is conducted through the medium of English.
Some teaching is conducted through the medium of English.	No teaching is conducted through the medium of English.
Some teaching is conducted through the medium of Welsh.	No teaching is conducted through the medium of Welsh.

- the alteration of the teaching of pupils in a year group at a secondary school (or secondary education in relation to middle or special schools) which falls within the description in column 1 of the table below so that it falls within the description in the corresponding entry in column 2.

<b>Column 1</b>	<b>Column 2</b>
Five or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils.	A decrease by four or more in the number of the relevant subjects taught (wholly or mainly) through the medium of Welsh to any pupils.
Five or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils.	A decrease by four or more in the number of the relevant subjects taught (wholly or mainly) through the medium of English to any pupils.
Every relevant subject is taught (wholly or mainly) through the medium of Welsh to all pupils.	Three or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils.
Every relevant subject is taught (wholly or mainly) through the medium of English to all pupils.	Three or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils.
One or more relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils.	No relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils.
One or more relevant subject is taught (wholly or mainly) through the medium of English to any pupils.	No relevant subject is taught (wholly or mainly) through the medium of English to any pupils.

(Relevant subjects are defined as any subjects apart from English and Welsh which are taught at a school).

- an enlargement of the premises of a school (excluding nursery and special schools), which would increase the capacity of the school by at least 25% or 200 pupils as compared with the school's capacity on the appropriate date. In determining an increase in capacity all enlargements that have taken place since the appropriate date are to be taken into account together with the proposed enlargement. The "appropriate date" is the latest date of:
  - the date falling five years before the date on which it is planned to implement the proposals to make the enlargement;
  - the date when the school first admitted pupils;
  - the date (or the latest date) when any previous statutory proposals that involved enlarging the premises of the school were implemented.

For the purposes of an enlargement of school premises "capacity" is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Circular No: 21/2011);

- the making permanent of a temporary enlargement of the school where that temporary enlargement would have been a regulated alteration when undertaken but for the fact that it was temporary;
- the reduction in the physical capacity of a mainstream school, except where the proposed capacity will be greater than the highest number of pupils on roll at the school at any time in the previous two school years prior to the publication of the proposal. In this context, "capacity" is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011 Measuring the Capacity of Schools in Wales)<sup>14</sup>;
- the addition or removal of SEN provision or any change in the type of such provision. This is where the provision is in a mainstream school but the pupils who are admitted are in addition to admission number of the school. The provision **must** also be recognised by the local authority as reserved for pupils with SEN;
- the introduction or ending of banding arrangements for the admission of pupils into a mainstream school (under section 101 of the School Standards and Framework Act 1998 (the 1998 Act));
- the introduction or ending of boarding, or an increase or decrease in boarding provision in mainstream schools by 50 pupils or 50% of capacity, whichever is the greater;
- for special schools (except where the school is in a hospital) an increase in the number of pupils for whom the school makes provision which, when taken together with all such previous increases in the number of pupils, would increase the number of pupils by 10% or the relevant number of such pupils (whichever is the lesser). The relevant number is 5 where the school only makes boarding provision, and is 20 in other cases. Any previous increase in the number of pupils is taken from the appropriate date. The appropriate date is whichever is the latest date of the following:
  - 19 January 2013;
  - the date when the school first admitted pupils; and
  - the date (or the latest date) when any previous statutory proposals that involved enlarging the premises of the school were implemented.
- for a special school, the introduction or ending of boarding provision, or the alteration of boarding provision such that the number of pupils for whom provision is made is increased or decreased by 5 pupils;

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<sup>14</sup> The effect of this is that where schools have spare capacity that capacity can be removed without the need for a statutory proposal. However, where schools are full or near full, a proposal must be published to reduce the school's capacity.

- a change in the type of special educational needs for which a special school makes provision;
- the enlargement, or making permanent of a temporary enlargement, of the teaching space at a nursery school, by 50% or more;
- the addition or removal of provision (in a nursery school) which is recognised by the local authority as reserved for pupils with special educational needs;
- for a nursery school at which a group of pupils is taught wholly or mainly through the medium of Welsh, an alteration so that all the pupils are taught wholly or mainly through the medium of English;
- for a nursery school at which a group of pupils is taught wholly or mainly through the medium of English, an alteration so that all the pupils are taught wholly or mainly through the medium of Welsh.

### 2.3 Who can publish a proposal?

The following table sets out the powers to publish proposals under sections 41-45 of the 2013 Act:

<b>Local Authority</b>	<b>Governors of Foundation or Voluntary Schools</b>	<b>Promoters of New Voluntary Schools (including local authorities)</b>	<b>Governors of Community schools</b>
Proposals to discontinue a voluntary or foundation school.	Proposals to discontinue their school.		
Proposals to increase/decrease the capacity of a foundation or voluntary school without a religious character.	Proposals to make a significant alteration to their school.		
Proposals to establish, discontinue or make a significant alteration to community schools.		Proposals to establish a new voluntary school.	
Proposals to change the category of community schools.	Proposals to change the category of their school.		Proposals to change the category of their school.



Local authorities may also make proposals to add or remove school sixth forms at voluntary and foundation secondary schools, but only if they have first gained the consent of the Welsh Ministers to do so. Consent **must** be sought by means of a written application that clearly sets out the local authority's rationale for the proposal.

In addition, the 2013 Act provides the Welsh Ministers with the power to publish proposals to:

- a) remedy excessive or insufficient provision of school places (where they have already issued a direction to a local authority or governing body to that effect) (section 59);
- b) secure regional provision for special educational needs (where they have already issued a direction to a local authority/local authorities/governing bodies to that effect) (section 68); and
- c) add or remove school sixth forms (section 71) .

## 3. Consultation

### 3.1 Principles

Section 48 of the 2013 Act requires that before school organisation proposals are published under sections 41-45, they **must** first be subject to consultation. In addition, proposals published under section 68 by the Welsh Ministers to secure regional provision for special educational needs or published under section 71 to reorganise sixth forms **must** also be subject to prior consultation. The requirement to consult does not apply to proposals to discontinue a small school<sup>15</sup> made under section 43.

Case law has established that the consultation process **should**:

- be undertaken when proposals are still at a formative stage;
- include sufficient reasons and information for particular proposals to enable intelligent consideration and response;
- provide adequate time for consideration and response; and;
- ensure that the product of consultation is conscientiously taken into account when the ultimate decision is taken.

The process and guidance which follow have been developed with due regard to the principles listed above. Those considering bringing forward proposals will need to be fully aware of this process and guidance. However, proposers **must** be mindful of the four underlying principles and take any necessary additional steps to ensure that those principles are fully upheld.

From time to time proposers will have conducted 'informal' consultation with particular stakeholders at an earlier stage in the development of proposals. Such consultation **must not** be seen as a substitute for any part of the formal consultation processes set out below.

### 3.2 Consultation document

Those bringing forward statutory proposals **must** publish a consultation document in hard copy and electronically on their website or that of the relevant local authority. Hard copies **must** be available on request. Consideration **should** be given to publishing in other formats where accessibility might otherwise be an issue.

The following **must** receive either a hard copy of the consultation document or be emailed a link to the relevant website (but see also the section on Consultation with Children and Young People):

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<sup>15</sup> The 2013 Act defines a small school as a school with fewer than 10 registered pupils on the third Tuesday in the January immediately preceding the date on which the proposals are made. This date is chosen as it is the date that all schools in Wales are required to submit the Pupil Level Annual Census to the Welsh Government; this includes the number of pupils on roll.

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- parents (and where possible prospective parents) carers and guardians, and staff members of those schools;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school; and
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

The consultation document **must** be issued during the term time of the schools affected and consultees **must** be given at least 42 days to respond to the document, with at least 20 of these being school days.

In the case of all proposals, the consultation document **must** contain the following information:

### **Description and Benefits**

- a detailed description of the status quo setting out its strengths and weaknesses and the reasons why change is considered necessary;
- a detailed description of the proposal or proposals (a proposer may consult on more than one potential proposal), the projected timetable for statutory procedures and for implementation of the proposals and any proposed interim arrangements which might be necessary for their implementation. In describing the proposals, proposers **should** normally refer to them using the terms set out in this Code (e.g. school closure) but where two or more existing schools become one school operating on more than one site (e.g. where former infant and junior schools become a primary school) the terms 'merger' or 'amalgamation' might be used;
- the expected benefits of the proposals and disadvantages when compared with the status quo;
- any risks associated with the proposals and any measures required to manage these;
- a description of any alternatives considered and the reasons why these have been discounted;
- information on any changes to learner travel arrangements were the proposals to be implemented and the impact on accessibility of provision.

### **Details of affected schools**

- the names, locations and categories (i.e. community, voluntary controlled, voluntary aided, foundation) of all existing schools likely to be affected by the proposals (for example, in the case of a proposal to close a school information **should** be provided about all the surrounding schools to which it might reasonably be considered that pupils may wish to transfer);
- the number of pupils on roll currently<sup>16</sup> and the figures recorded for the previous four annual school censuses at all existing schools likely to be affected by the proposals;

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<sup>16</sup> For primary schools, the number of nursery pupils should be shown separately and excluded from forecasts.

- five year forecasts of pupil rolls at all existing schools likely to be affected by the proposals both currently (i.e. based on the existing configuration of schools) and if the proposals are implemented;
- the pupil places capacity<sup>17</sup> of all existing schools likely to be affected by the proposals;
- the number of nursery places at any existing school likely to be affected by the proposals;
- information about the quality of accommodation at all existing schools likely to be affected by the proposals including reference to the condition category of the school as identified by the 21<sup>st</sup> Century Schools Survey;
- the language medium of all existing schools likely to be affected by the proposals (using the Welsh Government Circular 23/2007 “Defining schools according to Welsh medium provision”).

### **Quality and standards in education**

- the likely impact of the proposals on the quality of the following (reference to relevant Estyn Key Questions are included in brackets):
  - a. outcomes (standards and wellbeing);
  - b. provision (learning experiences, teaching, care support and guidance, and learning environment);
  - c. leadership and management (leadership, improving quality, partnership working and resource management);

at the school or schools which are the subject of the proposals and at any other school or educational institution which is likely to be affected.

- information from the most recent Estyn reports for each school likely to be affected;
- the likely impact of the proposals on the ability of school or schools which are the subject of the proposals or any other school which is likely to be affected, to deliver the full curriculum at the foundation phase and each key stage of education.

### **Finance**

- the financial costs of the proposal and any potential savings (including where appropriate the current costs per pupil and the projected costs upon completion) – capital and recurrent (including school transport and staff costs);
- the sources from which capital funding will be provided;
- how any capital receipts or recurrent costs savings will be deployed;

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<sup>17</sup> The Welsh Government Circular 21/2011 “Measuring the Capacity of Schools in Wales”.

## Land and buildings

- details of any potential transfer or disposal of land or buildings that may need to occur as a result of the proposals.

## Consultation details

- details of how people can make their views known including the address to which comments in writing can be made and the deadline for those comments;
- details of how people can ask further questions about the proposals;
- a statement to the effect that responses to consultation will not be counted as objections to the proposal and that objections can only be registered following publication of the notice;
- and explanation of the publication process, the making of objections and determination of published proposals;
- a pro-forma for comments, including an opportunity for consultees to suggest alternatives to the proposals and to register their wish to be notified of publication of the consultation report.

Where proposals involve establishing a new school the following information **must** also be included in the consultation document:

- the new school's:
  - a. proposed admission number and admission arrangements;
  - b. age range;
  - c. pupil places capacity and/or number of nursery places;
  - d. location;
  - e. category (i.e. Community, Voluntary Aided or Voluntary Controlled);
  - f. language category (as defined by Information document No. 023/2007);
  - g. details of the proposed accommodation to include a list of proposed facilities;
  - h. in the case of a special educational needs (SEN) resource base in a mainstream school or a special school, information on the special needs of the pupils proposed to be admitted;

- i. home to school transport arrangements (including any transitional arrangements) and the local authority's transport policy.<sup>18</sup>

Where proposals involve the closure of a school the following information **must** be included in the consultation document:

- details of any alternatives to closure that have been considered and the reasons why these have not been taken forward;
- the impact of proposals on the local community, particularly in rural areas and in areas designated for communities first programmes or successor programmes;
- the likely impact on staff of schools named in proposals;
- in the case of alternative provision:
  - a. the name and location of the proposed alternative provision;
  - b. a comparison of the quality and standard of education provided at the school from which pupils would be transferred and the proposed alternative school or schools and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
  - c. admission arrangements at the proposed alternative school;
  - d. a comparison of the quality of accommodation at the school from which pupils would be transferred and at the proposed alternative and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
  - e. information on any building works necessary to ensure that transferred children can be accommodated at the alternative provision;
  - f. the impact on pupils' journeys to school and on school transport costs; and
  - g. information regarding available walking routes to the alternative provision;
  - h. the language medium at the proposed alternative school.

Where proposals relate to a special school or involve specialist resource bases attached to mainstream schools the following information **must** be included in the consultation document:

- the impact on SEN provision;
- how proposals will contribute more generally to enhancing the quality of education and support for children with SEN.

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<sup>18</sup> Section 3 of the Learner Travel (Wales) Measure 2008 sets a threshold for entitlement for free home to school transport provision at 2 miles or further for primary education and 3 miles or further for compulsory aged secondary school education.

Where any school involved or affected provides teaching through the medium of Welsh the following information **must** be included in the consultation document:

- the impact of proposals on the Welsh language (see the Welsh language impact assessment at Annex D).

Where the proposal concerns a school with a designated religious character the following information **must** be included in the consultation document:

- the impact on availability and access to places at a school with the same designated religious character.

Where the proposal concerns a change of category the following information **must** be included in the consultation document:

- the effect of the change of category on governance arrangements and the governing body's powers over policies and arrangements in respect of admissions, employment and the curriculum; and
- any proposed changes to policies and arrangements in respect of admissions, employment and the curriculum.

In some circumstances, proposers may consider it appropriate to consult on a range of options rather than one specific proposal, but in such cases, all of the information set out above **must** be provided in relation to each of the identified options.

A recommended template consultation document is at Annex C. Proposers are not required to adhere to the suggested format, but **must** ensure that any alternative format they choose to adopt provides the required information.

### **3.3 Consultation with children and young people**

Proposers **must** also make suitable arrangements to consult with pupils of any affected school (or part of a school in the case of provision reserved for children with SEN) and, where possible, with children and young people who are likely to attend those schools. As a minimum, this **must** include consultation with the school councils of the affected schools, but **should** also include consultation with individual learners where this is appropriate and practicable. Governing bodies **must** help facilitate this aspect of the consultation.

The information given to children and young people **must** be presented in such a way that it is relevant to their age and level of likely understanding and allows them to reach an informed opinion. The agreed children and young people's participation standards for Wales are available on the Welsh Government's website; proposers **should** refer to these and act in accordance with them.

If consulting with individual learners, proposers **should** produce and distribute a version or versions of the consultation document appropriate to the age/ages of the children and young people affected. The consultation document **should** also clearly



explain to children and young people the difference between the consultation and objection periods and how and when they can object to proposals. Where necessary, proposers **should** provide assistance to children and young people who wish to submit a consultation response.

### 3.4 Procedures

There is no requirement for proposers to hold consultation meetings although there will be circumstances where proposers will consider that meeting with certain groups of consultees will assist greatly in the dissemination of information and provide a suitable platform for the consultees to make their views known. Where meetings are arranged, proposers **should** ensure that they are arranged in such a way that consultees in any of the categories set out a paragraph 3.2 are treated fairly and equitably. A full written record **should** be made of the issues raised and the answers provided at any meetings which are held.

Proposers may use other ways to engage consultees as they think appropriate. For example, open days or 'drop-in' sessions might provide interested parties with a convenient way to access information, seek clarification and provide comments.

In the case of proposals to reorganise schools for which land and/or buildings are held on trust, or which have a designated religious character, the proposer **must** conduct consultation with the trustees and/or appropriate religious body before the consultation document is published. The proposer **must** allow 28 days for the receipt of comments and **must** have due regard to those comments before any decision is made to proceed to general consultation.

Where, in the course of consultation, a new option emerges which the proposers decide to pursue, they **must** consult afresh on this option before proceeding to publication.

### 3.5 Consultation reports

Within 13 weeks of the end of the period allowed for responses (and in any event prior to publication of the proposals), the proposer **must** publish a consultation report:

- summarising each of the issues raised by consultees;
- responding to these by means of clarification, amendment to the proposal or rejection of the concerns, with supporting reasons; and
- setting out Estyn's view (as provided in its consultation response) of the overall merits of the proposal.

The consultation report might also make recommendations – for example, to the local authority's executive or the governing body – about how to proceed i.e. to publish the proposals as consulted on with any appropriate modifications, to abandon the proposals and retain the status quo or to significantly recast the proposals and re-consult.

Proposers **must** ensure that any views expressed by children and young people affected by the proposals are highlighted in the consultation report and that it is accessible to them.

The consultation report **must** be published electronically, either on the proposer's website or if one is not available, on the relevant local authority's website. In addition, hard copies **must** be available on request. This **must** take place before any proposal is published.

The following **must** be advised of the availability of the consultation report:

- Pupils, parents (and where possible prospective parents) carers and guardians, and staff members of schools which are subject to the proposals;
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school; and
- consultees who had requested notification.

The following **must** receive either a hard copy of the consultation report or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected – including in the case of dedicated SEN provision any authority placing or likely to place statement pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;

- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

Unless proposers have applied for and been granted a time extension by the Welsh Ministers, proposals **must** be published within 26 weeks of the end of the period allowed for consultation responses, otherwise the proposals will lapse and a new consultation document **must** be issued to revive them.

Applications to the Welsh Ministers for a time extension **must** be made in writing before the 26 week period has elapsed and **must** set out the reasons why an extension is considered necessary. In deciding whether to approve an extension, the Welsh Ministers will take into account the reasons given for the application, the nature of the proposals and any other relevant factors. The Welsh Ministers would be unlikely to approve any application which would result in more than a year elapsing between the end of the period allowed for consultation responses and the publication of a statutory notice.

Statutory proposals are sometimes brought forward as a result of strategic reviews into school provision carried out by local authorities. Whilst it is good practice to consult on such reviews, such consultation **must not** take the place of the formal consultation necessary on individual proposals as required by the Code.

Where the prospective proposers are not a local authority they **should** discuss their intentions with the local authority which would maintain any proposed new or altered provision at an early stage, i.e. before formal consultation commences.

Proposers **should not** refer to the period allowed for objections as the consultation period. The term consultation only applies to the period before final decisions are made to proceed to publish a proposal.

Consultees can submit views either in favour of or against a proposal. Consultees **should** be advised that unfavourable comments made during the consultation period will not be treated as objections, and that if they wish to object, that they need to do so in writing during the statutory objection period. If consultees submit a request during the objection period that a response submitted at consultation stage should be treated as an objection, this **should** normally be accepted. Those responsible for publishing proposals **should** make every effort to ensure that those who have expressed opposition or concern during the consultation period are aware that statutory notices have been published.

## 4. Publication of statutory proposals

### 4.1 Manner of publication

Once the proposer decides to proceed with a proposal they **must** publish the proposal<sup>19</sup> by way of statutory notice.

Proposals **must** be published on a school day and the objection period (see 4.2) **must** include 15 school days (in addition to the day on which it is published).

The proposals **must** be published:

- i. on the proposer's website (if it has one);
- ii. on the website of the existing/proposed maintaining local authority, where the local authority is not the proposer;
- iii. by being posted at or near the main entrance to any existing school which is the subject of the proposal, or, if there is more than one main entrance, all of them;
- iv. where a new school is being established, in a conspicuous place in the area to be served by the school;
- v. by providing any school which is the subject of proposals with copies of the notice to distribute to pupils, parents carers and guardians, and staff members (the schools may distribute the notice by email);
- vi. in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

Furthermore, on the day that they are published, the following **must** receive either a hard copy of the proposals or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;

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<sup>19</sup> Section 48 2013 Act.

- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People’s Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

It is no longer a requirement to publish the proposal in a newspaper.

## **4.2 Length of objection period**

The 2013 Act requires that anyone wishing to make objections to a school organisation proposal has the opportunity to do so. To be considered as statutory objections, objections **must** be made in writing or by email, and sent to the proposer within 28 days of the date on which the proposal was published (“the objection period”).

## **4.3 Content of published proposals**

The published proposals **must** all contain the following information:

- the name of the persons or body publishing the proposal;
- the planned date of implementation (or dates if implementation is to be staged);

- details of how to obtain a copy of the consultation report;
- the date by which objections should be sent and the address to send them to, including the relevant email address.

#### Additionally

- proposals to establish a new school **must** state:
  - the proposed language category of the school as defined by Information Document No: 023/2007;
  - the name of the proposed maintaining local authority;
  - the location of the site of the school (and where appropriate the postal address);
  - whether the school will be single or mixed sex;
  - the age range of the school;
  - the category of the school - community, voluntary aided, voluntary controlled, community special;
  - whether the governing body or the local authority will be the admissions authority;
  - the proposed arrangements for transport of pupils;
  - the admission number for each relevant age group in the first year of implementation or at each stage of implementation - “admission number” is to be determined in accordance with the calculation set out from time to time by the Welsh Ministers (currently contained in the Welsh Government Circular No: 21/2011);
  - the proposed capacity of the school – “capacity” is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011);
  - for a special school, information on the type of SEN for which provision will be made;
  - whether the school will have a religious character, and if so the nature of that character and the proposed appropriate religious body;
  - whether the admission arrangements of the school will make any provision for selection by ability permitted by section 101 of the School Standards and Framework act 1998 (pupil banding);
  - in the case of a new voluntary school, whether the proposals are to be implemented by the local authority or the promoters and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each such body.
- proposals to alter a school or change its category **must** state:
  - the name and address of the school subject to the proposal;

- the name of the maintaining local authority;
  - a description of the proposed alteration or change of category;
  - where the alteration involves enlargement, or a reduction in capacity, the current number of pupils, the capacity of the school and the proposed capacity – “capacity” is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011);
  - the number of pupils to be admitted in each relevant age group in the first year of implementation or at each stage of implementation;
  - in the case of a change in the type of SEN provision, the alternative provision for pupils and the impact on school transport; and
  - any implications the alteration might have on home to school transport provision.
- proposals to discontinue a school **must** state:
    - the name and address of school to be closed;
    - the name of the maintaining local authority;
    - the school’s religious character if it has one, and if so, the appropriate religious body;
    - details of the alternative school/s which pupils can attend, including any interim arrangements and the language category of the alternative school/s as defined by Information Document No: 023/2007;
    - details of any measures being taken to increase the number of places available in alternative schools; and
    - arrangements for transport of pupils to alternative schools.

**Note:** Sometimes a proposal will need to incorporate two separate elements, e.g. a school might transfer to a new site and also be enlarged. In this case two proposals, which can be incorporated into one statutory notice, may be necessary.

Annex B comprises several recommended statutory notice templates which proposers may find helpful in the construction of a statutory notice.



## 5. Determining proposals (other than proposals made by the Welsh Ministers)

### 5.1 Objection reports

Under section 49 of the 2013 Act proposers **must** publish a summary of the statutory objections and the proposer's response to those objections ("the Objection Report"). This **must** take place:

(a) in the case of a local authority that is required to determine its own proposals under section 53 of the Act (see 5.4 below), before the end of 7 days beginning with the day of its determination; and

(b) in all other cases, before the end of 28 days beginning with the end of the objection period.

The Objection Report **must** be published by being posted:

- i. on the proposer's website (if it has one);
- ii. on the website of the existing/proposed maintaining local authority, where this differs from i above.

In addition, hard copies **must** be made available on request.

The following **must** be advised of the availability of the Objection Report:

- Parents (and where possible prospective parents) careers and guardians, and staff members of schools which are the subject of the proposals; and
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

The following **must** receive either a hard copy of the objection report or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;

- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposal;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest in the case of proposals affecting secondary provision, any further education institutions serving the area of the school;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

## **5.2 Approval by the Welsh Ministers**

Proposals require approval by the Welsh Ministers if:

- (a) the proposals affect sixth form education; or
- (b) the proposals have been made by a proposer other than the relevant local authority and an objection has been made by that authority and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

Proposals affect sixth form education if:

(a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age; or

(b) they are proposals to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.

Where a proposal requires determination by the Welsh Ministers, the proposers **must** notify the Welsh Ministers within 35 days of the end of the objection period and forward to them copies of the statutory objections in addition to the objection report set out at paragraph 5.1. The proposer **must** also send to the Welsh Ministers any proposals which it considers are related to the proposals requiring determination. The Welsh Ministers will then decide whether these other proposals require determination by them.

The Welsh Ministers may decide to approve, reject or approve the proposals with modifications.

Modifications would normally only include changes to matters such as the timing of implementation or admission numbers. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published. Before making any modification, the Welsh Ministers **must** first consult with the proposer and the relevant governing body/ies and local authority (where they are not the proposers), and obtain the proposer's agreement to the modification.

Approvals can be made conditional on a specified event occurring by a specified date.

### **5.3 Approval by the local authority**

Proposals published under section 48 require approval under this section if:

- (a) they do not require approval by the Welsh Ministers;
- (b) they have been made by a proposer other than the relevant local authority; and
- (c) an objection to the proposals has been made and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

#### **Procedures**

Where proposals require approval by the local authority, the proposer **must** notify the local authority of a proposal requiring approval and forward to them the documents listed below within 35 days of the end of the objection period:

- a copy of the consultation document;

- a copy of the consultation report;
- a copy of the published notice;
- a copy of the objection report;
- copies of the statutory objections;
- copies of all of the above in relation to any proposals which are related to the proposals requiring approval.

Local authorities **must** decide whether any related proposals sent to them require their approval.

They **must** deal with all proposals which require approval without delay in so far as that is compatible with the proper consideration of the issues. In any event, the local authority **must** issue its decision, within 16 weeks (112 days) beginning with the end of the objection period. However a failure to comply with that time limit does not affect the validity of any decision reached.

Local authorities **must** decide whether to approve, reject or approve with modifications, the proposals.

Modifications can only include changes to matters related to implementation such as changes to admission numbers or to the timing of implementation. The local authority **must not** make modifications that would, in effect, substitute a new proposal for the proposal which was published. Before making any modification, the local authority **must** first consult with the proposer and obtain their consent to the modification. They **must** also obtain the consent of the Welsh Ministers. If consent cannot be obtained, and the local authority believes that the proposals are not acceptable in their published state, they **must** reject the proposals. The local authority **must** also consult with the governing body of any school to which the proposals relate (where the governing body is not the proposer).

Approvals may be made conditional on a specified event occurring by a specified date.

## 5.4 Determination by proposers

Where proposals do not require approval under section 50 and 51 of the 2013 Act, they fall to be determined by the proposer.

Under section 53 of the 2013 Act, determination by the proposer **must** be made within 16 weeks (112 days) of the end of the objection period. Where the proposer fails to determine the proposal within the period of 16 weeks it is taken to have withdrawn the proposal and it is required to republish the proposals if it wishes to proceed.

Where a local authority's proposals have received objections, and require determination under section 53 of the 2013 Act, the local authority **must not** approach the determination of these proposals with a closed mind. Objections **must**

be conscientiously considered alongside the arguments in respect of the proposals and in the light of the factors set out in section 1.3 – 1.14 of this Code. In these cases the objection report **must** be published at the same time as the decision is issued rather than within 28 days beginning with the end of the objection period.

## 5.5 Local authority decision making

Where local authorities are required to approve or determine proposals which have received objections, a proposed amendment<sup>20</sup> to Schedule 2 to the Local Authority (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended) will permit the local authority's executive 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.

However, if they choose to do so, local authorities will not be prevented by Schedule 2 to the relevant regulations from adopting alternative, locally agreed processes for taking such decisions. These might include the formation of a local decision making committee, potentially in collaboration with other local authorities in their region.

Where local authorities choose to follow this route, they will need to consider carefully how they will ensure that such bodies deliver fair and robust decision making.

Annex E provides details of a possible model for a local decision making committee.

## 5.6 Decision notification

Decisions (in relation to proposals which require approval or determination) **must** be made and issued in writing and **must** set out clearly the reasons for the decision.

Decisions **must** be published electronically on the proposer's website (if it has one) and that of the relevant local authority (if different).

The following **must** be advised of the availability of the decision:

- Parents (and where possible prospective parents) careers and guardians, and staff members of schools which are the subject of the proposals;
- In the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

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<sup>20</sup> Once Part 3 of the 2013 Act is commenced, the Welsh Ministers intend to lay amending regulations to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 so that they come into force at the same time that Part 3 is operational.

The following **must** receive either a hard copy of the decision letter or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

## 5.7 Referral of local authority decisions to the Welsh Ministers

Under section 54 of the 2013 Act where proposals have been approved or rejected by a local authority the following bodies may within 28 days refer the proposals to the Welsh Ministers for consideration:

- i. Another local authority affected by the proposals;
- ii. The appropriate religious body for any school affected;
- iii. The governing body of a voluntary or foundation school subject to the proposals;
- iv. A trust holding property on behalf of a voluntary or foundation school subject to the proposals; and
- v. A further education institution affected by the proposals.

The bodies making the referral will need to set out why they believe that the decision reached by the local authority is wrong.

The Welsh Ministers will decide whether the bodies referred to in i, ii and iv are affected by the proposals and therefore require consideration.

Where a proposal requires consideration by the Welsh Ministers, the local authority **must** provide them, on request, with copies of the statutory objections and any other information considered necessary by the Welsh Ministers.

Where a proposal requires their consideration the Welsh Ministers may decide to approve, reject or approve the proposals with modifications.

Modifications would normally only include changes to matters such as the timing of implementation or admission numbers. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published. Before making any modification, the Welsh Ministers **must** first consult with the proposer and the relevant governing body/ies and local authority (where they are not the proposers), and obtain the proposer's agreement to the modification.

Approvals can be made conditional on a specified event occurring by a specified date.

Proposals to discontinue a small school may not be referred to the Welsh Ministers.

## 6. Implementing proposals

### 6.1 Implementation – general

Proposals **must** normally be implemented as determined or approved (with or without modifications).

However, if a proposer is satisfied, after consultation with any affected governing body, that a proposal would be unreasonably difficult to implement on the original implementation date, or that circumstances have so altered since the proposal was approved that its implementation on the original date was inappropriate, it may modify the proposal so that its implementation is delayed by up to three years.

If a proposer is satisfied, after consultation with any affected governing body, either that implementation of proposals would be unreasonably difficult or that circumstances have so altered since the proposals were approved that their implementation would be inappropriate altogether, it may determine that the proposals should be abandoned.

In the case of proposals to close a school, and after consultation with any affected governing body, a proposer may also determine to bring forward implementation by a period of up to 13 weeks. Implementation **must** only be brought forward where a school has no remaining pupils on roll or so few pupils that delivery of the curriculum is severely compromised.

Where proposals have received approval by the local authority or the Welsh Ministers, proposers **must** only make a determination to delay, bring forward or abandon a proposal with the agreement of the Welsh Ministers. Any such application for agreement **must** be made in writing with the proposer's reasons clearly set out.

Notification of any determination to delay, bring forward or abandon a proposal **must** be given to relevant parties including the Welsh Ministers, Estyn, the maintaining local authority, the relevant Regional Transport Consortia and the governing bodies, parents, pupils and staff of any affected school, as appropriate, within seven days of it being made. The notification **must** set out, briefly, the reasons for that determination.

If a proposal has been approved by the Welsh Ministers or by a local authority subject to a specified event occurring by a specified date, and that condition is not met by that date, the proposals **must** be considered as rejected unless the proposer has sought and received agreement from the Welsh Ministers or the local authority to have that condition varied by the substitution of a later date.

### 6.2 Implementation – change of category

Part 3 of Schedule 5 to the 2013 Act sets out full details relating to the transfer of land. Any transfers will take place on the implementation date. Where a community school becomes a voluntary aided or voluntary controlled school, any land other than



playing fields held by a local authority transfers automatically to the school's trustees.

Where a foundation, voluntary aided or voluntary controlled school without a religious character becomes a community school any publicly funded land transfers automatically to the local authority. Publicly funded land is defined in schedule 4 to the 2013 Act and includes land provided by the local authority or by means of a capital grant (within the meaning of Chapter 6 of Part 3 to the Education Act 1996). Any other land held by trustees or the governing body **must** be transferred to the local authority by means of a transfer agreement to be drawn up by the parties. Such a transfer may be subject to an agreed payment by the local authority. If the parties are unable to reach agreement in relation to a transfer, either party may apply Welsh Ministers to exclude the transfer of any area of land. The Welsh Ministers **must** then decide whether or not to direct its exclusion.

## 7. The closure of a school with fewer than 10 registered pupils

Where a school has fewer than 10 registered pupils (or there are no pupils remaining at a school) at the January census point the 2013 Act permits governing bodies/local authorities to undertake a streamlined procedure to bring about official closure.

This consists solely of the issue of the notice of closure – the requirement for general consultation being waived, provided sufficient equivalent school places have been identified which would be reasonably accessible to those pupils actually or potentially displaced. If objections are made, the proposal would be determined in all cases by the proposer. However, before bringing forward such proposals, proposers **must** seek the views of any trust with an interest in the school or the appropriate religious body and take these views into account before proceeding.

In the case of schools where some pupils remain, proposers **must** make sure that the closure notice is brought to the pupils' attention, that its meaning is made clear to them, and that appropriate steps are taken to enable these pupils to respond to the notice if they so wish. It is essential that pupils are provided with the opportunity to contribute to the decision making process and proposers **must** ensure that full account is taken of any views they express before a final decision is taken.

Proposers are encouraged to share information with parents and other schools and **should** ensure that they receive a copy of the notice. Any schools identified as those most likely to receive pupils **must** also be notified.

The existence of streamlined procedures in relation to the proposed closure of schools with fewer than 10 registered pupils does not mean that governing bodies or local authorities are required to bring forward closure proposals in relation to such schools. The possible closure of such schools **should** be considered in the light of the factors set out at section 1.

## 8. Proposals by the Welsh Ministers to rationalise school places

Where the Welsh Ministers have previously directed a local authority or governing body to bring forward proposals to remedy excessive or insufficient school places, they may publish their own proposals to the same effect.

The specific criteria upon which the Welsh Ministers might decide to issue a direction or subsequently publish a proposal, would vary depending on the circumstances pertaining to a particular area, but in general terms these are powers of last resort and would be used where a local authority has failed to ensure that:

- their area is served by schools which are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education; or
- each child in their area has reasonable access to one of those schools; or
- funding for education is cost effective and resources are used to secure the best possible educational outcomes for children and young people.

The proposals **must** be published in accordance with the provisions included in Chapter 4 above.

Any person may object to the proposals within the 28 day objection period. If objections are received, the Welsh Ministers **must** cause a local inquiry to be held to consider the proposals. Any other school organisation proposals which have been published and not determined **must** be referred to the local inquiry if the Welsh Ministers believe they are related to the proposal which is the subject to objection (and unless the Welsh Ministers form the opinion that they should be implemented).

The local inquiry **must** be conducted by a person appointed for that purpose by the Welsh Ministers and in accordance with any procedures set out by them at the time of the local inquiry's establishment.

Where a local inquiry has been held, the Welsh Ministers **must** consider the report of the person conducting the local inquiry. They may then do one of the following:

1. adopt with or without modifications, or determine not to adopt any of the proposals made by the Welsh Ministers;
2. approve with or without modifications, or reject any other proposals which are referred to the local inquiry;
3. make further proposals to rationalise school places.

If the Welsh Ministers decide to make further proposals there is no requirement to cause a further local inquiry to be held.

Where these further proposals made by the Welsh Ministers have not been referred to a local inquiry the Welsh Ministers may after considering any objections:

1. adopt the proposal with or without modifications; and
2. determine not to adopt the proposal.

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be approved or adopted subject to a specified event occurring by a specified date.

Proposals approved or adopted **must** be implemented in accordance with Chapter 6 above.

## 9. Proposals by the Welsh Ministers for regional provision for special educational needs

Where the Welsh Ministers have previously made an order directing a local authority or a governing body to bring forward school organisation proposals for the purpose of securing regional provision for children with special educational needs, they may publish their own proposals to the same effect.

The proposals **must** be consulted upon in accordance with Chapter 3 above and published in accordance with Chapter 4.

Any person may object to the proposals within the 28 day objection period.

The Welsh Ministers may, after considering any objections;

1. adopt the proposals with or without modification;
2. determine not to adopt the proposals.

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be adopted subject to a specified event occurring by a specified date.

Proposals which are adopted **must** be implemented in accordance with Chapter 6 above.

## 10. Proposals by the Welsh Ministers to restructure sixth form education

Under section 71 of the 2013 Act, the Welsh Ministers may make proposals for:

1. the establishment by a local authority of a school or schools to provide secondary education suitable to the requirements of sixth formers only (a 'sixth form school');
2. the introduction or ending of sixth form provision at a school, or;
3. the discontinuance of a sixth form school.

The proposals **must** be consulted upon in accordance with Chapter 3 above and published in accordance with Chapter 4.

Any person may object to the proposals within the 28 day objection period.

The Welsh Ministers may, after considering any objections;

1. adopt the proposals with or without modification
2. determine not to adopt the proposals

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be adopted subject to a specified event occurring by a specified date.

Proposals which are adopted **must** be implemented in accordance with Chapter 6 above.

## 11. Governing body notice to discontinue a foundation or voluntary school

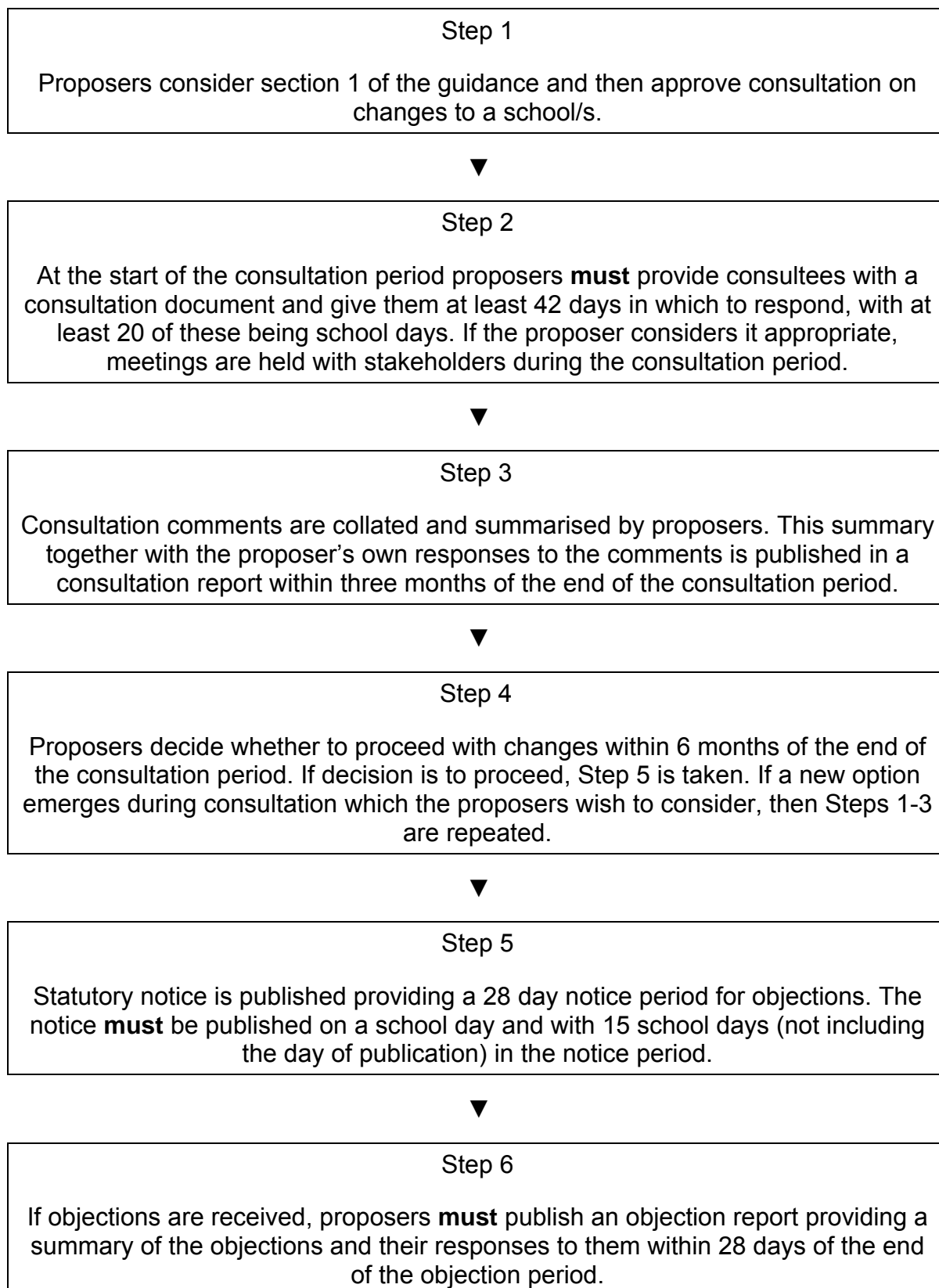
Section 80 of the 2013 Act permits the governing body of a foundation or voluntary school to discontinue the school by giving the Welsh Ministers and the local authority responsible for maintaining the school two years notice of its intention to do so.

Being given notice, the governing body **must**:

1. gain the consent of the Welsh Ministers if expenditure has been incurred on the school premises (otherwise than in connection with repairs) by the Welsh Ministers or local authority;
2. consult the Welsh Ministers if discontinuing the school would affect facilities for full time education suitable to requirements of persons over compulsory school age who have not attained the age of 19; and
3. consult the trustees for any land or buildings held on trust and/or the appropriate religious body where the school has a designated religious character and have regard to any comments which are received.

Where governing bodies require advice in relation to property held on charitable trust, they **should** contact the Charity Commission.

## Annex A: Illustrative flow chart for statutory proposals





Step 7a	Step 7b	Step 7c
<p>If the proposal does not require approval by the Welsh Ministers or the local authority, it <b>must</b> receive final determination by proposers within 16 weeks of the end of the objection period.</p>	<p>If the proposal requires determination by the Welsh Ministers, the proposer <b>must</b> send to the Welsh Ministers within 35 days of the end of the objection period the objections and the objection report. The Welsh Ministers will normally determine proposals within 16 weeks of the end of objection period.</p>	<p>If the proposal requires determination by the local authority, the proposer <b>must</b> send to the local authority within 35 days of the end of the objection period the consultation document, the consultation report, the published notice, the objections and the objection report.</p> <p>The local authority <b>must</b> issue a decision within 16 weeks of the end of the objection period.</p> <p>Within 28 days of the local authority's determination proposals may be referred to the Welsh Ministers by the following:</p> <ul style="list-style-type: none"> <li>i. Another local authority;</li> <li>ii. The appropriate religious body for any school affected (the diocesan authority);</li> <li>iii. The governing body of a voluntary or foundation school; subject to the proposals</li> <li>iv. A trust holding property on behalf of a voluntary or foundation school; subject to the proposals</li> <li>v. A further education institution affected by the proposals.</li> </ul>



Step 8
<p>If proposals receive approval or the proposer determines to implement them, they <b>should</b> be implemented in accordance with the date given in the statutory notice, or any subsequent modified date.</p>

## Annex B: Examples of statutory notices

### Example of a statutory notice to establish a new community or voluntary school

[Insert name and address of those publishing the proposals].

Notice is given in accordance with section 41 of the School Standards and Organisation Act 2013 and the School Organisation Code that [*proposer's name*], having consulted such persons as required, propose to establish a new [*state language category*<sup>21</sup>] school to be maintained by [*state name of maintaining local authority*] at [*state location and, where appropriate, the postal address*] for [*boys*]/ [*girls*] / [*boys and girls*] aged [*insert age range*].

The [*insert name of proposer*] undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposer's responses and the views of Estyn is available on [*insert the proposer's website or if one is not available the relevant local authority's website*].

It is proposed to implement the proposal on [*insert date*]. [*Where implementation is planned in stages, the date on which each stage is planned to be implemented should be given*].

The proposed new school will be a [*insert community or voluntary aided or voluntary controlled*] school.

[*insert the governing body or the name of the local authority*] will be the admission authority.

The admission number for [*state the relevant age group or age groups*<sup>22</sup>] at the new school in the first school year in which the proposals have been implemented is [*state number*] [*Where the proposals are to be implemented in stages, the admission number in the first school year in which each stage has been implemented must be given*]. [*If there is to be a separate admission number for the sixth form it should be included*].

The new school's pupil capacity will be [*insert capacity figure*<sup>23</sup>]. [*It would also be useful to include the number of nursery places being provided if appropriate*].

[*For a special school, information on the special educational needs of pupils for which provision will be made*].

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<sup>21</sup> Proposers should refer to the Welsh Assembly Government information document 23/2007 Defining schools according to Welsh medium provision.

<sup>22</sup> A "relevant age" group" is defined in section 142(1) of the 1998 Act as meaning "an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school". There could, therefore, be more than one relevant age group, in which case the number to be admitted must be given in relation to each such relevant age group.

<sup>23</sup> Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales.

*[Give information on whether it is proposed that the admission arrangements for the new school will make provision for pupil banding].*

*[In the case of a new voluntary school, give information about its religious character and proposed appropriate religious body if it is to have a religious character].*

*[Give information about the proposed arrangements for transport of pupils to the new school].*

*[In the case of proposals to establish a new voluntary school, state whether the proposals are to be implemented by the local education authority or the promoters, and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each such body].*

Within a period of 28 days after the date of publication of these proposals, that is to say by *[insert date]* any person may object to the proposals.

Objections should be sent to *[name and address of proposer]*.

Signed .....

For the *[local authority]*.

*[Date – **should** be the same as the date of publication].*

## **EXPLANATORY NOTE**

*[It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals].*

**Example of a statutory notice to discontinue a maintained community, foundation, voluntary or nursery school**

*[Insert name and address of those publishing the proposals].*

Notice is given in accordance with section 43 of the School Standards and Organisation Act 2013 and the School Organisation Code that *[proposer's name]*, having consulted such persons as required, propose to discontinue *[name and address of school]*. The school is currently maintained by *[state name of maintaining local authority]* *[and if relevant, state school's religious character]*.

The *[insert name of proposer]* undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposer's responses and the views of Estyn is available on *[insert the proposer's website or if one is not available the relevant local authority's website]*.

It is proposed to implement the proposals on *[insert date]* (2).

*[Insert details of the schools which pupils at the school to be discontinued may attend, including any interim arrangements and the language category of the alternatives as defined by Information Document No: 023/2007].*

*[Insert details of any other measures proposed to be taken to increase the number of school places available in consequence of the proposed discontinuance].*

*[Insert particulars of the proposed arrangement for transport of pupils to other schools].*

Within a period of 28 days after the date of publication of these proposals, that is to say by *[insert date]* any person may object to the proposals.

Objections should be sent to *[name and address of the proposer]*.

Signed .....

For the *[local authority or governing body]*.

*[Date – **should** be the same as the date of publication].*

**EXPLANATORY NOTE**

*[It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals].*

## Example of a statutory notice to make a regulated alteration to a maintained community, foundation, voluntary or nursery school

Notice is given in accordance with section 42 of the School Standards and Organisation Act 2013 and the School Organisation Code that [*proposer's name*], having consulted such persons as required, proposes to alter [*name and address of school*] so that [*add description of proposed change/s*]. The school/s is/are currently maintained by [*state name of maintaining local authority*].

The [*insert name of proposer*] undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposer's responses and the views of Estyn is available on [*insert the proposer's website or if one is not available the relevant local authority's website*].

It is proposed to implement the proposal on [*insert date*]. [*Where implementation is planned in stages, the date on which each stage is planned to be implemented **should** be given*].

[*Where the alteration involves enlargement, or a reduction in capacity, insert*], The current number of pupils at the school is [*insert number*], the pupil capacity of the school is [*insert pupil places capacity<sup>24</sup>*] and the proposed capacity once the proposal is implemented will be [*insert proposed capacity*].

[*Where the alteration involves enlargement, or a reduction in capacity insert*] The admission number for [*state the relevant age group or age groups<sup>25</sup>*] at the school in the first school year in which the proposals have been implemented will be [*state number*] [*include a separate sixth form number if appropriate*] [*Where the proposals are to be implemented in stages, the admission number in the first school year in which each stage has been implemented **must** be given*]. [*where appropriate*] There will be xx nursery places.

[*Where the alteration involves a change in the type of SEN provision, provide information on the alternative provision for pupils and the impact on school transport*].

Within a period of one 28 days after the date of publication of these proposals, that is to say by [*insert date*] any person may object to the proposals.

Objections should be sent to [*name and address of the proposer*].

The [*insert name of proposer*] will publish a summary of any such objections made (and not withdrawn in writing) within the objection period, together with their

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<sup>24</sup> Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales.

<sup>25</sup> A "relevant age group" is defined in section 142(1) of the 1998 Act as meaning "an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school". There could, therefore, be more than one relevant age group, in which case the number to be admitted must be given in relation to each such relevant age group.

observations thereon, within the period of 28 days after the end of the objection period.

Signed .....

For the [*local authority or governing body*].

[*Date – **should** be the same as the date of publication*].

## **EXPLANATORY NOTE**

[*It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals*].

## Annex C: Consultation document template

The following template sets out a suggested but not mandatory format for the information which is required to be included in a consultation document. This outline of the contents is not exhaustive and proposers would be expected to include additional elements depending on the nature and context of the proposals under consideration.

### Introduction - Explanation of the consultation exercise

This section might set out that the proposers were considering the reorganisation of school places in a particular area and name the school/s affected. It might explain that before moving forward with its proposals, the proposers wished to seek the views of all those with a likely interest in the proposal/proposals so that their views can be taken into account before decisions are made.

This section might then set out the process by which consultation will be conducted, including:

- a list of all those being consulted (The interested parties with whom proposers **must** consult are set out at Section 3 of the Code. However, it is expected that proposers would also consult with interested parties who are not included in this list where that was appropriate in the context of a specific proposal);
- if meetings are to be held, the date, time, venue and audience of any such meetings (allowing sufficient notice for likely attendees);
- the name and address of the person to whom written comments on the proposal/s should be sent, and the deadline for the receipt of these comments;
- the arrangements made for children and young people to participate; and
- the details of any other consultation arrangements such as open days, exhibitions, etc.

### Background to the proposal/s

This might set out the following details for all schools affected or likely to be affected by the proposals, including schools which might in future be expected to receive additional pupils, and special schools:

- the names, locations, categories and language categories of all existing schools likely to be affected by the proposal (for example in the case of a proposal to close a school information **should** be provided about all the surrounding schools which it may be reasonably considered that pupils may wish to transfer);
- the number of pupils on roll currently and the figures recorded for the previous four annual school censuses at all existing schools likely to be

- affected by the proposals (for primary schools, the number of nursery pupils **should** be shown separately and excluded from forecasts);
- five year forecasts of pupil rolls at all the existing schools likely to be affected by the proposal both currently (i.e. based on the existing configuration of schools) and if the proposal is implemented;
- the pupil places capacity (based on the Welsh Government Circular No 21/2011"Measuring the Capacity of Schools in Wales");
- the number of nursery places where applicable;
- the number of sixth form places where applicable; and
- the quality of accommodation with reference to categories of condition of the buildings of the schools as provided in any schools surveys.

Where the proposal is to establish a new school:

- the new school's:
  - proposed admission number and admission arrangements;
  - age range;
  - pupil places capacity and/or number of nursery places;
  - location and accessibility;
  - category;
  - language category (and an explanation of this); and;
  - details of the proposed accommodation to include a list of proposed facilities;
  - the home to school transport arrangements and policy of the local authority together with information of safe walking routes; and
  - In the case of a special educational needs (SEN) resource base in a mainstream school or a special school, information on the special needs of pupils.

Where the proposal is to close a school:

- details of any alternatives to closure that have been considered and the reasons why these have not been taken forward;
- the impact on any affected school or provider – particularly on alternative schools named in a closure proposal;
- the impact of the proposals on the local community, particularly in rural areas and in areas designated for Communities First programmes or successor programmes;
- the likely impact on staff of schools named in a proposal;
- in the case of the transfer of pupils to a different location:



- the name and location of the proposed alternative provision;
- a comparison between the quality and diversity of education provided at the school from which pupils would be transferred and the proposed alternative/s and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
- admission arrangements at the proposed alternative school;
- a comparison between the quality of accommodation at the school from which pupils would be transferred and the proposed alternative and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
- information on how the transferred children will be accommodated at the alternative school including projected class sizes following implementation;
- the impact on pupils' journeys to school;
- the availability of safe waking routes to alternative schools.

Where proposals relate to a special school or involve dedicated SEN provision in a mainstream school:

- the impact on SEN provision; and
- how the proposals will contribute more generally to enhancing the quality of education and support for children with SEN.

Where any school involved or affected provides teaching through the medium of Welsh:

- the impact of proposals on the Welsh language (see Welsh language impact assessment at Annex D).

Where the proposal concerns a school with a designated religious character:

- the impact on availability and access to schools of the same religious character.

Where the proposal concerns a change of category:

- the effect of the change of category on governance arrangements and the governing body's powers over policies and arrangements in respect of admissions, employment and the curriculum; and
- any proposed changes to policies and arrangements in respect of admissions, employment and the curriculum.

Where the proposal involves a potential disposal or transfer of land or buildings, details of the same.

This section might also explain why the current schools provision is considered inadequate or unsatisfactory by reference, as appropriate, to the factors set out in Section 1 of the Code.

### **The proposals - Description and rationale**

This section might set out a detailed description of the status quo and the precise nature of the intended change/s, including the effect on all schools which are the subject of the statutory proposal/s involved in its implementation, and all others which are likely to be affected.

This section might also include the following information, as appropriate:

- The expected revisions to the local school data (as set out in the background section above) once the proposals are implemented;
- Implementation dates and details of any transition arrangements;
- Revenue savings/costs;
- Capital funding costs, including the source of any such funding;
- Description of any new accommodation;
- Proposed new admission arrangements;
- Proposed new transport arrangements and the accessibility of alternatives;
- Staffing issues;
- Community Impact Assessment;
- Welsh Language Impact Assessment;
- Equality Impact Assessment;
- Likely benefits to children and young people, in accordance with the seven core aims of the United Nations Convention on the Rights of the Child.

This section might also set out the rationale for change – the inadequacies of the status quo (as well as any strengths it may have) and the benefits that the changes will bring with reference to Section 1 of the Code. If appropriate, the disadvantages of the proposals might also be set out with an explanation of why these disadvantages are outweighed by the benefits. The paramount importance of educational standards **should** be emphasised, and there **should** be direct reference to how the proposal would benefit overall education provision in the locality and address other factors set out in Section 1 of the Code.

Consideration of alternatives, if appropriate, and reasons why these have not been pursued, might also be included in this section.

## **Explanation of the statutory process**

This section might set out the statutory process by which the proposals will be published and approved/determined including the intended date of publication of the notice/s; an explanation of the objection period and the ways in which objections will be treated, and assurance that anyone can object to the proposal.

## **Response Pro-forma**

A response pro-forma for comments, including an opportunity for consultees to register their wish to be notified of publication of the consultation report, **should** be attached to the consultation document.

## Annex D: Community impact and Welsh-medium impact assessments

The Welsh Government takes the view that the requirement for assessments should not be overly burdensome and does not consider that it is necessary to commission such work from external consultants. Local authorities are already under a duty to carry out equality impact assessments which could provide the basis for the impact assessments specified in this guidance.

### Community Impact

Impact assessments **should** ideally be included in consultation documents. Whilst these notes do not prescribe what should be included in a community impact assessment, proposers might include the following:

- information on the proportion of pupils from the catchment area that attend the school;
- information on the proportion of pupils from outside the catchment area that attend the school;
- information about any other facilities the school accommodates e.g. youth club/play group;
- information about any other facilities or services the school provides e.g. after school clubs, community library;
- if accommodation, facilities or services are provided by a school, where they would be provided in the event of closure;
- whether other facilities available in the immediate local or wider community will or could be enhanced in the event of a school closure (e.g. improvements to village halls, playgrounds, provision of holiday play schemes);
- information about the facilities and services provided at any alternative school;
- information about the distance and travelling time involved in attending an alternative school of the same language category;
- how parents' and pupils' engagement with the alternative school and any facilities it may offer could be supported (e.g. how pupils (and particularly any less advantaged pupils) will be helped to participate in after school activities);
- Information about any wider implications the changes would have on public transport provisions;
- Information on wider community safety issues.

## Welsh language Impact

These notes are not prescriptive or exhaustive but the impact assessment in respect of the Welsh language might include the following:

- information on the language category of the school;
- information on the language category of any alternative school;
- information about standards in the Welsh language in the school and any alternative school;
- information about after school activities which provide additional opportunities to use Welsh in the school and any alternative school (e.g. Urdd clubs);
- information about whether the school provides facilities for members of the community to learn Welsh, or undertake activities through the medium of Welsh, and where any alternative facilities could be provided;
- whether it might be appropriate to provide additional after school facilities at any alternative school to further secure standards in the Welsh language;
- how parents' and pupils' engagement with any alternative school and any specific language enhancement it offers could be supported (e.g. how pupils will be helped to participate in Urdd clubs);
- information on how the proposal fits with the authority's Welsh in Education Strategic Plan and any future actions that will be needed in consequence of the change to continue to comply with the scheme or meet targets in the scheme.

## **Annex E: Local decision making committee**

The model set out below represents one potential way of establishing a 'local decision making committee'.

The size of the committee would be significant in shaping its effectiveness. Too large and it would be unwieldy and difficult to establish a consensus. Too small and there might be too little debate and too narrow a perspective. A committee with five members might represent an ideal size.

The make up of the committee will also be important in determining how it is perceived. If the intention is to emphasise its separation from the local authority's executive, it might be necessary to 'disqualify' members of the executive and anyone who has a connection to the local authority, proposer (if different from the local authority) or the school to which the proposals relate, which might raise doubts over their ability to act impartially regarding the proposal.

Providing they are not 'disqualified', local authorities might decide to appoint committees made up of local authority members only, or of persons unconnected with the local authority (including members of another local authority), or of any combination of the two.

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 local authority might 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 members of the committee. In the case of any other voluntary school with a designated religious character, the person or persons by whom the foundation governors are appointed might be invited to nominate a representative.

Local authorities might want to ensure that at least one member of the committee has direct experience of working in the education sector. An existing or former member of a school's senior management team or an experienced school governor might be suitable in this respect.

In the event that the committee is to be comprised of local authority members only, the local authority might want to consider making it politically balanced in the sense set out at sections 15 and 16 of the Local Government and Housing Act 1989.

The local authority may wish to recruit, train and retain a pool of eligible persons and appoint to a committee as and when required. This would provide a number of advantages including reducing the time needed to set up a committee when required and helping the local authority to ensure potential committee members have sufficient training.

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.

The local authority would want to ensure that all committee members 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.

It would be advisable for the committee to have the services of a clerk provided by the local authority. Whilst the clerk would not be a member of the committee they might act as an independent source of advice. To enable this, clerks would need a good understanding of the Code and the relevant parts of the 2013 Act and would have received appropriate training. The local authority, where necessary, would need to provide the committee with appropriate legal advice. It would be advisable for the clerk not to have been involved at any stage in the proposal that the committee are considering or to have any interest in any decision reached by the committee members.

The key tasks of the clerk would be to:

- make the necessary administrative arrangements for the committee;
- be an independent source of advice on procedure, 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 in accordance with paragraph 5.13.

To enable a committee to reach an informed decision, the local authority would need to forward to the appointed clerk the documents set out paragraph 5.3 above, shortly after the end of the objection period. It would be advisable for the committee to reach its decision on the basis of this written evidence rather than seek or consider new information (unless they consider it will assist in the determination within the timescale), or consider oral representations.