

# School Organisation Code



## Statutory Code

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# School Organisation Code

## Audience

Local authorities, governing bodies of maintained schools, diocesan authorities and Estyn.

## Overview

The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code.

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.

## Action required

See above.

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## Additional copies

This document can be accessed from the Welsh Government's website at [gov.wales/educationandskills](http://gov.wales/educationandskills)

## Related documents

School Standards and Organisation (Wales) Act 2013

*Defining schools according to Welsh medium provision (2007)*

*Measuring the capacity of schools in Wales* 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 applies to proposals in respect of maintained schools as defined at Section 98 of the 2013 Act. That is a school in Wales, which is a community, foundation or voluntary school, a community special school or a maintained nursery school. This does not include pupil referral units (PRUs).

The first edition of the Code came in to force on 1 October 2013 and applied in respect of all school organisation proposals published by way of statutory notice on or after that day. This is the second edition of the Code and it comes in to force on 1 November 2018 and comes into effect immediately subject to the following paragraph.

If a proposer has commenced consultation before 1 November 2018 the proposal **must** be published and determined in accordance with the first edition of the Code. Consultation will be considered to have commenced where a consultation document, required by section 3.2 of the first edition of the code, has been published.

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.

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

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.

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.

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.

### **Presumption against the closure of rural schools**

This second edition of the Code makes special arrangements for rural schools (defined within the Code), establishing a procedural presumption against the closure of rural schools. This requires proposers to follow a more detailed set of procedures and requirements in formulating a rural school closure proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal. These are set out mainly in sections 1.8 and followed through in sections 3, 5, 7 and Annex A of this Code.

# 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** aim to ensure that proposals support the Welsh Government's commitment to increase school effectiveness, and narrow inequalities in achievement between advantaged and disadvantaged areas, groups and individuals.

A list of legislation, overarching principles and policies which will assist proposers in the development and consideration of proposals is included at annex E. This list is not exhaustive.

## 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 five inspection areas of the Office of Her Majesty's Chief Inspector of Education and Training in Wales (Estyn) Common Inspection Framework (as of September 2017), they **should** consider the likely impact of the proposals on:

- standards and progress overall, of specific groups and in skills;
- wellbeing and attitudes to learning;
- teaching and learning experiences (quality of teaching, the breadth, balance and appropriateness of the curriculum, and the provision of skills);
- care support and guidance (tracking, monitoring and the provision of learning support, personal development and safeguarding); and
- leadership and management (quality and effectiveness of leaders and managers, self evaluation processes and improvement planning, professional learning, and use of resources)

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 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). Advice from Estyn might reasonably be used as evidence in relation to alternative provision which is brand new. 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.

#### **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>4</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>5</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>6</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;

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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> Section 14 of the Education Act 1996.

<sup>5</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>6</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.



*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 or any successor documents; 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. 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 of compulsory school age at a school where a school closure, reduction in capacity or age range contraction is proposed **must** be able to continue receiving an education 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.*

*In all cases local authorities should consider:*

- *The extent to which the proposal would support the targets in the approved Welsh in Education Strategic Plan (WESP).*
- *How the proposal would expand or reduce Welsh language provision and in the case of the latter, set out why provision will be reduced.*

*In the case of proposed school closures local authorities should consider:*

- 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 **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>7</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.

## **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:

- What effect proposals will have on surplus places 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 overall, local authorities **should** review their provision and **should** consider whether to make proposals for their removal if this will improve the effectiveness and efficiency of provision. 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.*

*Although local authorities are asked to manage excessive surplus places this does not automatically mean closing schools. Sections 1.7 and 1.8 of the Code encourage proposers to look at other options available to them and their schools, for example clustering, collaboration or federation with other schools to increase the school's viability or making use of the existing buildings as a community resource. They are also encouraged to rationalise school space by co-locating services within the school to offset costs.*

*It **should not** normally be necessary to provide additional places at schools when there are others of the same type with surplus places within a reasonable distance.*

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<sup>7</sup> The Learner Travel Statutory Provision and Operational Guidance June 2014 Chapter 5.

*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 21st Century Schools Investment Programme and contribute to the delivery of sustainable schools for the 21st Century and to the better strategic management of the school estate.

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 2008 and **should** seek the advice of the relevant local authority transport department 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.*

- 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>8</sup> Advice **should** be sought from the Charity Commission or the Welsh Ministers (as the Principal Regulator of governing bodies which are charities) where there is any uncertainty.*

*Under section 82 of the School Standards and Framework Act 1998 the Welsh Ministers have the power to order modifications of a trust deed. The power is discretionary and Welsh Ministers would ordinarily expect trustees to approach the Charity Commission first.*

## 1.7 Specific factors in the consideration of school closures

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;

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<sup>8</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.

- 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 possibility of making fuller use of the existing buildings as a community or 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);

- the overall effect of closure on the local community (including the loss of school based facilities which are used by the local community; 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>9</sup> local authorities and governing bodies bringing forward such proposals **must** still take into account the factors set out in this Code.

## **1.8 Presumption against the closure of rural schools**

This second edition of the Code makes special arrangements in regard to rural schools establishing a procedural presumption against their closure. This requires proposers to follow a more detailed set of procedures and requirements in formulating a rural school closure proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal.

This does not mean that a rural school will never close but the case for closure must be strong and all viable alternatives to closure must have been conscientiously considered by the proposer, including federation.

### **Designation of 'rural school' for the purposes of the presumption against closure**

A rural school for the purposes of the presumption against closure is identified using the Office for National Statistics' rural and urban classification, as being located within villages in the sparsest context, other (hamlet or dispersed) in sparsest context and other (hamlet or dispersed) in less sparse context

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<sup>9</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.

A list of schools derived from this classification is attached at annex F. Proposers should refer to the designation and the list of schools to establish whether the proposed closure under consideration concerns a rural school and the procedural presumption against closure applies.

### **Specific further steps required to be taken by the proposer in formulating a rural school proposal**

As well as taking into account the factors in chapter 1 (paragraphs 1.3 to 1.6) which are relevant in the case of all proposals the proposer is required to follow the further steps below where the proposal relates to the possible closure of a rural school.

#### **Formulating the proposal**

Where the proposer is considering formulating a proposal to close a rural school, the proposer must clearly identify the reasons for formulating the proposal. This will be the key challenges which the school faces and the proposer wishes to address by proposing closure of the school.

The proposer is required to consider these reasons when making their decision on a proposal or any reasonable alternatives, so it is important that they are as clear and specific as possible. For example, reasons might relate to a falling school roll, difficulties delivering the curriculum or concerns about the school building.

Rather than simply stating that the school is no longer viable, the proposer should carefully consider and set out the reasons why it considers the school is no longer viable.

#### **Identifying reasonable alternatives**

The proposer must identify any reasonable alternatives to the proposal which might also address the reason for formulating the proposal. It is important to ensure that all reasonable alternatives identified are properly explored **before** the proposer decides to proceed to consult on closure.

The aim is to ensure that when an option to close a rural school is proposed, the decision to consult on that option is only taken after very careful consideration, and after all other reasonable alternatives have been considered and a clear assessment undertaken of their merits and viability.

Federation has been shown to have particular benefits for rural schools. Proposers **must** show how they have considered federation as an alternative to closure of a rural school.

Schools are major public and community assets; it is important that their future is considered not just from an education perspective, but across the full range of a local authority's responsibilities. Consideration of alternatives to closure could include whether there is scope for the school to be better integrated into a local authority's wider asset management and community planning process. This could for example, include building effective links with local community regeneration strategies.

Examples of alternatives to closure that might merit consideration include:

- clustering, collaboration with other schools (taking account of the scope for use of ICT links between school sites);
- Using the school as a 'community hub' to accommodate and support provision of a range of community services, e.g. health, childcare facilities, family and adult learning, community education, sport, recreation, social activity etc.
- Whether it would be feasible and economical to co-locate local services within the school to offset the costs of maintaining the school);
- Whether the establishment of multi-site schools might be considered as a means of retaining buildings:

As with all closure proposals the proposer must prepare a community impact assessment to explore the overall and long term impact on people and the community of the closure of the rural school and the loss of the building as a community facility. Examples of what the proposer **should** consider as part of the Community Impact Assessment are included at Annex C.

Once the proposer has identified all the reasonable alternatives, the proposer **must** assess for each alternative its

- likely impact on Quality and Standards in Education;
- likely impact on the community; and
- likely effect of different travelling arrangements.

### **Preparing a proposal paper for the decision maker**

Before determining whether to proceed to consultation in accordance with chapter 3 of this code, the person(s) who determine whether or not a proposal should proceed to consultation must be presented with a paper ("the proposal paper") which, in addition to detailing the general factors in paragraphs 1.3 to 1.6 of Chapter 1 of this Code must also include:

- The reason for the closure proposal
- A list of the reasonable alternatives to closure that have been identified; and
- An assessment of the following for each of reasonable alternatives that has been identified:
  - The likely impact on Quality and Standards in Education.
  - The likely impact on the community.
  - The likely effect of different travelling arrangements;

The proposer should not make a decision as to whether to proceed to consultation until these preliminary requirements have been carried out and unless they are satisfied that implementation is the most appropriate response to address the key challenges identified as the reason for proposing discontinuance of the school.

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 **should** still take into account the factors set out in Chapter 1 of this Code when developing and considering proposals. If the school is on the list of “rural schools” this includes satisfying the requirements set out in 1.8 “*Presumption against the closure of rural schools*”.

## **1.9 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.

## **1.10 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;
- 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;

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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..



- the extent to which proposals contribute to the 14-19 agenda taking account of the views of regional 14-19 networks.;
- 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 regional 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.

### **1.11 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 to maintain the school;
- 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 1.98 – 1.105 of the Welsh Government Learner Travel Statutory Provision and Operational Guidance 2014 provide further guidance on this provision.

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

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

- 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.
- the extent to which the proposal would support the targets in a local authority's Welsh in Education Strategic Plan (WESP).

## 1.13 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.

## 1.14 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.

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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.

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 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.

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

When approving proposals, relevant bodies who are the proposer:

- **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.

When determining proposals relevant bodies:

- **must** consider whether there are any other related proposals;
- **must** consider the extent to which 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** consider the extent to which the proposal has been published in accordance with this Code and whether 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 that 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);
3. to make a regulated alteration to a maintained school; and
4. to change the category of a maintained school<sup>13</sup>.

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

The governing bodies of maintained schools may make proposals to change the category of their school. However, it should be noted that 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. Community schools are not permitted to have a religious character. It is not possible for voluntary aided, voluntary controlled or foundation schools with a designated religious character to become a community school through a change of category proposal. Similarly community schools cannot become voluntary schools with a designated religious character. No proposals may be made for any category of school to become a foundation school.

### **2.3 Regulated alterations**

Schedule 2 to the 2013 Act describes a number of regulated alterations to maintained schools (including special schools) which must not be carried out unless the relevant local authority and/or the governing body have complied with the requirements imposed by this Code. Although the regulated alterations are described below reference should also be made to Schedule 2 to the 2013 Act.

#### **Regulated alterations to community, foundation, voluntary schools, community special schools and maintained nursery 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 (one mile) of any of a main entrance of the school on its current site or sites;

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<sup>13</sup> Except to foundation – the 2013 Act prohibits schools from changing their category to foundation.

- 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).

**Regulated alterations to community, foundation, voluntary schools, and community special schools**

- 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).

### **Regulated alterations to community, foundation and voluntary schools**

- 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. This includes where there has been a previous decrease in a school's capacity in the last five years.

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);

A "temporary enlargement" is the enlargement of a school's premises which it is anticipated, at the time of its making, will be in place for fewer than three years.

- 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 introduction 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;

### **Regulated alterations to community special schools**

- 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

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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.



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 2012;
  - 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;
  - a change in the type of special educational needs for which a special school makes provision;

### **Regulated alterations to maintained nursery schools**

- 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, or any change in the type of such provision;
- 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.

## **2.4 Who can make a proposal?**

A local authority may make proposals to:

- establish, discontinue or make a regulated alteration (see 3.3 of Code) to community or maintained nursery schools;
- discontinue a voluntary or foundation school;
- increase or decrease the capacity of a foundation or voluntary school without a religious character.

Governing bodies of foundation or voluntary schools may make proposals to:

- discontinue their school;
- make a regulated alteration to their school.

Any person may make proposals to establish a new voluntary school. However, local authorities **should** work with the relevant religious body when the proposal is to establish a voluntary school with a religious character.

No new foundation school or foundation special school may be established in Wales.

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 make 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. However, where a closure proposal relates to a small school with fewer than 10 pupils which is designated as a rural school local authorities and governing bodies bringing forward such proposals **should** still take into account the factors set out in Chapter 1 this Code, including the further requirements which relate to the closure of rural schools set out in 1.8 “*Presumption against the closure of rural schools*”.

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.

### 3.2 Attention to detail

It is essential that proposers seek and achieve high standards both in the information that underpins school consultations and in the consultation documents that are published. These will be examined closely by communities, school staff and parents, and errors in details can easily undermine confidence in a proposal. Failure to provide accurate, high quality consultation documents can result in consultations being abandoned, taking much longer than expected and to increased conflict with communities.

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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.

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.

### 3.3 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.

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.

### 3.4 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 consultation document **must** be published on a school day of the school or schools subject to the proposal and consultees **must** be given at least 42 days to respond to the document, with at least 20 of these being school days.<sup>16</sup> Consultation documents should not be published on a school day which includes a school session which is devoted (wholly or mainly) to improving teaching standards or management practices of staff at the school (INSET days).

The following **must** be advised by letter or email of the availability of the consultation document and that recipients can, if they wish, obtain a hard copy of the consultation document on request (but see also section 3 on Consultation with Children and Young People):

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<sup>16</sup> A school day is defined in section 579 of the Education Act 1996 as any day on which at that school there is a school session. A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day.

- Parents (and where possible prospective parents) carers and guardians, and staff members of schools affected by 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;
- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority (including those in England, where appropriate) likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place pupils with SEN 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;
- the governing body of other schools which the proposer consider are likely to be affected by the proposals;
- the Welsh Ministers\*;
- Constituency and Regional 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 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;
- in the case of proposals affecting nursery provision any independent or voluntary providers who may be affected including Mudiad Meithrin;
- 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 Welsh language provision, the Welsh Language Commissioner.

\* In the case of the Welsh Ministers emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales). It is not necessary to send emails to individual Welsh Ministers.

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 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 (but see para 1.8 "*Presumption against the closure of rural schools*");
- 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>17</sup> and the figures recorded for the previous four annual school censuses at all existing schools likely to be affected by the proposals;
- 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>18</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 local authority's most recent condition survey using the categories of the original 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**

- an analysis of the likely impact of the proposals on the quality of the following (reference to relevant Estyn five inspection areas are included in brackets):
  - a) standards (standards and progress overall, of specific groups and in skills); wellbeing and attitudes to learning;
  - b) teaching and learning experiences (quality of teaching, the breadth, balance and appropriateness of the curriculum, and the provision of skills);
  - c) care support and guidance (tracking, monitoring and the provision of learning support, personal development and safeguarding); and
  - d) leadership and management (quality and effectiveness of leaders and managers, self evaluation processes and improvement planning, professional learning, and use of resources)

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

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<sup>17</sup> For primary schools, the number of nursery pupils should be shown separately and excluded from forecasts.

<sup>18</sup> The Welsh Government Circular 21/2011 "Measuring the Capacity of Schools in Wales".

affected, to deliver the full curriculum at the foundation phase and each key stage of education.

### **Welsh in Education Strategic Plan (WESP)**

- the extent to which the proposal would support the targets in the approved Welsh in Education Strategic Plan.
- How the proposal would expand or reduce Welsh language provision. In the case of the latter, set out why provision will be reduced.

### **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;

### **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 or suggest alternatives to 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;
- an explanation of the publication process, the making of objections and determination of published proposals.
- a space for consultees to respond to the consultation
- an opportunity for consultees 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>19</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 (but see para 1.8 "*Presumption against the closure of rural schools*"); ;
- the impact of proposals on the local community, 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;

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<sup>19</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.

- g. information regarding available walking routes to the alternative provision;
- h. the language medium at the proposed alternative school.

Where proposals involve the closure of a rural school and the decision has been made to consult on the proposal, the following information **must** be contained in the consultation document along with the information that **must** be contained for all proposals:

- The reason for the closure proposal (i.e. a description of the key challenges that the school faces and the proposer wishes to address);
- The alternatives to closure that have been identified and an assessment of these alternatives to include:
  - the likely impact on quality and standards in education,
  - the likely impact on the community and
  - the likely effect of different travelling arrangements.

In addition consultees must be informed of their opportunity to:

- make representations regarding the alternatives to closure that have been identified by the proposer as well as the main proposal;
- suggest other alternatives to closure which would address the reasons for closure (i.e. the key challenges the school faces which the proposer is seeking to address).

Where the proposal concerns adding or removing nursery provision. The following information **must** be included in the consultation document:

- 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.

Where the proposal concerns adding or removing sixth form provision. The following information **must** be included in the consultation document:

- 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 in the area;
- 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;
- 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>20</sup> above compulsory school age.

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.

Where the proposal concerns a change of language medium. The following information **must** be included in the consultation document:

- projected demand from parents for the type of provision proposed; and

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<sup>20</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 1.98 – 1.105 of the Welsh Government Learner Travel Statutory Provision and Operational Guidance 2014 provides further guidance on this provision.

- the extent to which existing provision, of the type proposed exceeds or falls short of demand or projected demand.

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

- an assessment of the impact of proposal on the Welsh language ( a Welsh language impact assessment must be included either in the main part of the consultation document or as an Annex ); and
- an explanation of how the proposal forms part of the WESP.

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.

### **3.5 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.

<https://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/ParticipationforChildrenandYoungPeople/?lang=en>

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.

### 3.6 Consultation reports

The proposer **must** publish a consultation report on their website or that of the relevant local authority. The report **must** be published at least two weeks prior to the publication of a statutory notice:

- 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;
- setting out Estyn's response to the consultation in full; and
- responding to Estyn's response by means of clarification, amendment to the proposal or rejection of the concerns, with supporting reasons.

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.

Where the proposal relates to the closure of a rural school in addition to the steps to be taken in respect of the consultation report for all schools the following special requirements apply:

Following the consultation period, when the proposer is reviewing the proposal prior to publication the proposer is required to carry out a further assessment for the proposal and each of the alternatives that were set out in the proposal paper. This involves the same matters that the proposer was required to assess in formulating the proposal:

- the likely impact on quality and standards in education,
- the likely impact on the community and
- the likely effect of different travelling arrangements.

The purpose of this further assessment is to take account of any further information that has come forward through the consultation or otherwise.

In its consultation report, the proposer is required to explain its assessment of the proposal and the reasonable alternatives identified, how this assessment differs from their earlier assessment (if at all) and its assessment of any further reasonable alternatives. Finally, the proposer is required to confirm whether it considers the implementation of the proposal, (wholly or partly) to be the most appropriate response to the reasons it identified for the proposal and give reasons for its conclusion.

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>21</sup> local authorities and governing bodies bringing forward such proposals **should** still take into account the factors set out in Chapter 1 of this Code when developing and considering proposals. If the school is on the list of “rural schools” this includes satisfying the requirements at 1.8 “*Presumption against the closure of rural schools*”.

The consultation report **must** be published electronically, either on the proposer’s website or 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 by letter or email of the availability of the consultation report:

- 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 maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority (including, those in England, where appropriate) 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;
- the governing body of other schools which the proposer considers are likely to be affected by the proposals;

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<sup>21</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.

- the Welsh Ministers\*;
- Constituency and Regional 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 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;
- in the case of proposals affecting nursery provision any independent or voluntary providers who may be affected including Mudiad Meithrin;
- 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 Welsh language provision, the Welsh Language Commissioner.

\* In the case of the Welsh Ministers emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales). It is not necessary to send emails to individual Ministers.

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

If the proposer decides to proceed with a proposal they **must** publish the proposal<sup>22</sup> by way of a notice (referred to in this Code as a “statutory notice”).

The statutory notice **must** be published on a school day but not on a school day which includes a session which is devoted (wholly or mainly) to improving teaching standards or management practices of staff at the school (INSET days).

The objection period (see 4.2) **must** include 15 school days<sup>23</sup> (in addition to the day on which it is published).

The statutory notice **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 the statutory notice is published, the following **must** be sent either a hard copy of the notice 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 (including, where appropriate, a local authority in England) likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place pupils with SEN in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;

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<sup>22</sup> Section 48 2013 Act.

<sup>23</sup> A school day is defined in section 579 of the Education Act 1996 as any day on which at that school there is a school session. A school session can be a morning session or an afternoon session, so a school day is any day when the school meets for all or part of the day.

- 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
- other schools which the proposers consider are likely to be affected by the proposals;
- the Welsh Ministers\*;
- Constituency and Regional 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 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;
- in the case of proposals affecting nursery provision, any independent or voluntary providers who may be affected including Mudiad Meithrin;
- 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 Welsh language provision, the Welsh Language Commissioner.

\* In the case of the Welsh Ministers emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales) It is not necessary to send emails to individual Ministers.

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

## 4.2 Length of objection period

The 2013 Act provides 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 before the end of 28 days beginning with the day on which the notice was published (“the objection period”).

### 4.3 Content of published statutory notice

The published statutory notice **must** 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

- a statutory notice for a proposal 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 admission 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.
- A statutory notice for a proposal 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.
- A statutory notice for a proposal 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 when objections have been received 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 by letter or email of the availability of the Objection Report:

- Parents (and where possible prospective parents) carers 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;
- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority (including, where appropriate, a local authority in England) likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place pupils with SEN 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;
- the governing body of other schools which the proposer consider are likely to be affected by the proposals;
- the Welsh Ministers\*;

- Constituency and Regional 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 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;
- in the case of proposals affecting nursery provision any independent or voluntary providers who may be affected, including Mudiad Meithrin;
- 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; and
- in the case of proposals affecting Welsh language provision, the Welsh Language Commissioner.

\* In the case of the "Welsh Ministers" emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales) It is not necessary to send emails to individual Ministers.

## **5.2 Approval by the Welsh Ministers (section 50 of the 2013 Act)**

Proposals require approval by the Welsh Ministers under section 50 of the 2013 Act 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 approval 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.

A proposal shall be regarded as “related” if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Where proposals are “related”, the decisions should be compatible.

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 (section 51 of the 2013 Act)**

Proposals published under section 48 require approval under section 51 of the 2013 Act 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 of 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 (section 53 of the 2013 Act)

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, an amendment<sup>24</sup> to Schedule 2 to the Local Authority (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended) permits 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 D provides details of a possible model for a local decision making committee.

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<sup>24</sup> The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013 No.2438 (W. 235).

## 5.6 Decision notification

Decisions (in relation to proposals which require approval or determination) **must** be made and issued in the form of a decision letter. The decision letter **must** set out clearly the reasons for the decision with reference to sections 1.3 to 1.6 of this Code and the specific factors in sections 1.7 to 1.14 [which includes the additional factors to be considered and requirements in relation to the closure of rural schools].

Additionally a decision letter for a proposal to discontinue a school designated as a rural school must state why the proposer is satisfied that such implementation is the most appropriate response to the reasons it identified for formulating the proposal.

Decision letters **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 by letter or email of the availability of the decision letter:

- Parents (and where possible prospective parents) carers 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;
- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority (including, where appropriate, a local authority in England) likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place pupils with SEN 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;
- the governing body of other schools which the proposer considers are likely to be affected by the proposals;
- the Welsh Ministers;
- Constituency and Regional 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 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;
- in the case of proposals affecting nursery provision, any independent or voluntary providers who may be affected including Mudiad Meithrin;
- 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 Welsh language provision, the Welsh Language Commissioner.

\* In the case of the Welsh Ministers emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales) It is not necessary to send emails to individual Ministers.

## 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, before the end of 28 days beginning with the day of the decision, 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.

Referrals should be sent by email to the Welsh Government mailbox [schoolsmanagementdivision3@gov.wales](mailto:schoolsmanagementdivision3@gov.wales). The body referring the decision **should** inform the relevant local authority that a referral has been made.

The body making the referral will need to set out in a letter 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<sup>25</sup> may not be referred to the Welsh Ministers.

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<sup>25</sup> Under section 54 of the 2013 Act proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56) may not be referred to the Welsh Ministers under this section. Section 56 defines a small school 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.

## 6. Implementing proposals

### 6.1 Implementation – general

Proposals **must** normally be implemented as determined or approved (with or without modifications). Proposers **should** notify the Welsh Ministers by email when a proposal is implemented. Emails should be sent to the following Welsh Government mailbox: [Schoolsmanagementdivision3@gov.wales](mailto:Schoolsmanagementdivision3@gov.wales). It is not necessary to send emails to individual Welsh Ministers.

However, under Section 55 of the 2013 Act 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 (under section 51 of the 2013 Act) or the Welsh Ministers (under section 50 of the 2013 Act), 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.

Where a proposal has been determined by the local authority under section 53 of the 2013 Act the local authority itself may determine to delay, bring forward or abandon the proposal.

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, 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 to the 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.<sup>26</sup>

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. If the school is on the list of "rural schools" this includes considering the factors and satisfying the requirements set out in section 1.8 "*Presumption against the closure of rural schools*" before issuing a closure notice. This means that the proposer should also:

- identify clear and specific reasons for formulating the proposal;
- identify any reasonable alternatives to closure which might also address the reasons for the proposal and provide evidence to show that it has carefully considered all other viable options (including federation), with a clear assessment of the merits and their viability including:
  - ✓ The likely education benefits;
  - ✓ The likely impact on the community;
  - ✓ The likely impact on travelling arrangements; and
- set out in the proposal paper (which is a paper to be presented to the decision maker) the alternatives that have been identified, give an assessment of these and explain why

the proposer considers in the light of the assessment that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.



## 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. Before 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 1

The proposer should refer to the designation of rural schools and the list of rural schools derived from it to establish if a proposed closure involves a rural school and the presumption against closure of rural schools set out in this Code applies.

### Step 2

The proposer should refer to section 1 of the School Organisation Code (the Code) which provides the factors to be taken into account in preparing, publishing, approving or determining all school organisation proposals.

### Step 3

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 consult the trustees and/or appropriate religious body before the consultation is published and 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.

### Step 4

Approval to proceed to formal consultation should be obtained. Where the proposer is the local authority the decision is normally made by the executive committee or cabinet. Where the governing body of a school is the proposer the governing body must make the decision.

### Step 5

The proposer must publish a consultation document on its website and make it available in hard copy. If the proposer is other than the local authority the consultation document can also be published on the relevant local authority's website. The consultation document must be published on a school day and consultees must have at least 42 days in which to respond, with at least 20 of these being school days. Section 3 of the Code sets out the information that all consultation documents and the additional information that consultation documents on proposed closure of rural schools must contain and provides a list of those parties who must be advised of its availability. The proposer must make suitable arrangements to consult with pupils of any school affected.

### Step 6

The proposer must publish a summary of the consultee's comments and the proposer's own responses to the comments (the consultation report) at least 2 weeks prior to publishing a notice. Section 3 of the Code provides information about the consultation report and lists the parties that must be advised of its availability.

### Step 7

Where the local authority is the proposer normally the executive committee or cabinet meets to consider the consultation and whether or not to proceed with the proposal. Where the governing body of a school is the proposer they should meet to consider the consultation and decide whether or not to proceed. If the decision is to proceed, Step 8 is taken. If a new option emerges during consultation which the proposers wish to consider, then Steps 1-5 are repeated.

### Step 8

Proposals must be published within 26 weeks of the end of the consultation period allowed for consultation responses, otherwise the proposal will lapse and a new consultation is required.

If the proposer decides to proceed with the proposal the proposer must publish a statutory notice providing a 28 day notice period for objections. The notice **must** be published on a school day and with 15 school days (not including the day of publication) in the notice period. Section 4 of the Code sets out the information a notice must contain and explains how it must be published.

### Step 9a

If there are no objections and the proposal does not require the approval of the Welsh Ministers. Where the proposer is the local authority normally the executive committee or cabinet meets to determine whether or not to proceed. Where the proposer is the governing body of the school the governing body should meet and determine whether or not to proceed.

### Step 9b

If objections are received, the proposer **must** publish a summary of the objections and their responses to those objections (the objection report).

### Step 10a

If the proposal does not require approval by the Welsh Ministers or the local authority, it **must** receive final determination by proposers within 16 weeks of the end of the objection period.

### Step 10b

If the proposal requires determination by the Welsh Ministers, the proposer **must** 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

### Step 10c

If the proposal requires determination by the local authority, the proposer **must** 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

	<p>normally aim to determine proposals within 16 weeks of the end of objection period.</p>	<p>report. 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>
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Step 11

If proposals receive approval or the proposer determines to implement them, they **should** be implemented in accordance with the date given in the statutory notice, or any subsequent modified date.



## 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 (Wales) 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>27</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 Estyn's full response 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>28</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>29</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*].

[*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*].

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<sup>27</sup> Proposers should refer to the Welsh Assembly Government information document 23/2007 Defining schools according to Welsh medium provision.

<sup>28</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>29</sup> Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales or any successor document.

*[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 of the date on which the proposal was published, 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 (Wales) 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 Estyn's full response 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].*

[Proposals to discontinue a rural school must state the reasons why the proposer is satisfied that such implementation is the most appropriate response to the reasons the proposer identified in formulating the proposal.]

Within a period of 28 days of the date on which the proposal was published, 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 Estyn's full response 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>30</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>31</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 provision, provide information on the alternative provision for pupils and the impact on school transport*].

Within a period of one 28 days of the date on which the proposal was published, 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*].

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<sup>30</sup> Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales or any successor document.

<sup>31</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.

## **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: 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);
- impact on health and wellbeing e.g. if pupils would be less able to walk or cycle to school;
- Information about any wider implications the changes would have on public transport provisions;
- Information on wider community safety issues.

There are many other considerations that are also likely to be relevant in terms of an impact assessment for a rural school closure for example:

- Whether closure would encourage families with school-age children to leave the community or discourage young families from moving to the community;
- What impact closure might have on other services provided locally, for instance if the school is the only remaining public building in a community;
- Whether, or not, the school is a real hub of community life, used for other purposes – such as public meetings, local events, fetes, surgeries, and other get togethers – which would either cease or be diminished by being required to move elsewhere;
- Whether or not the loss of the school, and potentially families, will have a detrimental effect on the wider economy of the community;
- 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);
- the overall effect of closure on the local community (including the loss of school based facilities which are used by the local community).

Early engagement and communication with the local community is a good way of establishing and understanding all of the relevant factors.

### **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. the Urdd, Mentrau Iaith 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 activities provided by the Urdd, Mentrau Iaith);
- observations provided by the local authority's Welsh medium education forum (if it has one)<sup>32</sup>;
- 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.

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<sup>32</sup> The Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 provides a definition of a Welsh medium education forum. However, it should be noted that a local authority is not required to have such a forum.

## **Annex D: 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 of 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.

## Annex E: Legislation and national policies which will assist in the development of proposals

- United Nations Convention on the Rights of the Child
- The Well-being of Future Generations (Wales) Act 2015 (see below)
- Cymraeg 2050, A Million Welsh Speakers
- Action Plan, Cymraeg 2050
- 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
- Local plans for economic or housing development
- Welsh in Education Strategic Plans (made under part 4 of the School Standards and Organisation (Wales) Act 2013)
- Children and Young People's Plans (or successor plans)
- 21<sup>st</sup> Century Schools – Capital Investment Programme and the relevant wave of investment
- Learner Travel Statutory Provision and Operational Guidance 2014
- Measuring the capacity of schools in Wales, Circular No: 021/2011
- Children and Young People's National Participation Standards

### The Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 ('the 2015 Act') sets out new ways of working – of planning and making decisions – for local authorities and other public bodies it lists. The aim is that, by improving these things, the overall well-being of Wales will be better improved by the things public bodies collectively do. The Act and the statutory guidance makes it clear that local authorities must, in the course of their corporate planning and their delivery against those plans:

- balance short term needs against the ability to meet **long term** needs;
- think about the impact their objectives have on other organisations' objectives, and on the well-being of Wales, in an **integrated** way;
- **involve** in those processes people who reflect the diversity of the population they serve;
- work together **collaboratively** with other organisations to better meet each others' objectives; and
- deploy their resources to **prevent** problems from getting worse or from occurring in the first place.

The statutory guidance, for organisations subject to the Act, sets out the expectations for how the duties should be met:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>

The Act itself is available to view online:

<http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

Current practice on the use of surplus school accommodation, Information document No 158/2014

## Annex F: List of rural schools

School Ref	School Name	Local Authority
6602133	Ysgol Gymuned Bodffordd	Isle of Anglesey
6602135	Ysgol Gymuned Bryngwran	Isle of Anglesey
6602141	Ysgol Gynradd Garreglefn	Isle of Anglesey
6602142	Ysgol Gymuned y Ffridd	Isle of Anglesey
6602145	Ysgol Gymuned Moelfre	Isle of Anglesey
6602146	Ysgol Gynradd Llanbedrgoch	Isle of Anglesey
6602153	Ysgol Gymuned Llanfechell	Isle of Anglesey
6602155	Ysgol Gynradd Llangoed	Isle of Anglesey
6602156	Ysgol Henblas	Isle of Anglesey
6602157	Ysgol Gymuned Llannerch-y-Medd	Isle of Anglesey
6602160	Ysgol Pencarnisiog	Isle of Anglesey
6602162	Ysgol Penysarn	Isle of Anglesey
6602163	Ysgol Santes Gwenfaen	Isle of Anglesey
6602165	Ysgol Gynradd Rhosybol	Isle of Anglesey
6602173	Ysgol Gynradd y Tywyn	Isle of Anglesey
6602227	Ysgol Rhyd y Llan	Isle of Anglesey
6605200	Ysgol Caergeiliog	Isle of Anglesey
6612008	Ysgol Gynradd Abererch	Gwynedd
6612010	Ysgol Beddgelert	Gwynedd
6612015	Ysgol Gynradd Borth-y-Gest	Gwynedd
6612017	Ysgol Brynaerau	Gwynedd
6612036	Ysgol Gynradd Chwilog	Gwynedd
6612039	Ysgol Crud-y-Werin	Gwynedd
6612046	Ysgol Gynradd Edern	Gwynedd
6612048	Ysgol Bro Plenydd	Gwynedd
6612049	Ysgol Gynradd Garndolbenmaen	Gwynedd
6612059	Ysgol Gynradd Llanaelhaearn	Gwynedd
6612060	Ysgol Gynradd Llanbedrog	Gwynedd
6612066	Ysgol Gynradd Llangybi	Gwynedd
6612070	Ysgol Gynradd Llanllyfni	Gwynedd
6612075	Ysgol Babanod Morfa Nefyn	Gwynedd
6612078	Ysgol Baladeulyn	Gwynedd
6612081	Ysgol Gynradd Nebo	Gwynedd
6612093	Ysgol Gynradd Pentreuchaf	Gwynedd
6612103	Ysgol Sarn Bach	Gwynedd
6612110	Ysgol y Gorlan	Gwynedd
6612111	Ysgol yr Eifl	Gwynedd
6612112	Ysgol Gynradd Tudweiliog	Gwynedd
6612185	Ysgol Gynradd Dyffryn Dulas	Gwynedd
6612189	Ysgol Gynradd Dyffryn Ardudwy	Gwynedd
6612190	Ysgol Bro Cynfal	Gwynedd
6612192	Ysgol Edmwnd Prys	Gwynedd
6612194	Ysgol Gynradd Llanbedr	Gwynedd

6612198	Ysgol y Garreg	Gwynedd
6612199	Ysgol O M Edwards	Gwynedd
6612207	Ysgol Gynradd Pennal	Gwynedd
6612210	Ysgol Talsarnau	Gwynedd
6612211	Ysgol Gynradd Tanygrisiau	Gwynedd
6612213	Ysgol Bro Hedd Wyn	Gwynedd
6612214	Ysgol Bro Tryweryn	Gwynedd
6612220	Ysgol Ffridd y Llyn	Gwynedd
6612228	Ysgol Craig y Deryn	Gwynedd
6612229	Ysgol Bro Llifon	Gwynedd
6613004	Ysgol Pont y Gof	Gwynedd
6613010	Ysgol Foel Gron	Gwynedd
6613018	Ysgol Gynradd Llandwrog	Gwynedd
6613023	Ysgol Gynradd Llanystumdwy	Gwynedd
6622012	Ysgol Betws y Coed	Conwy
6622043	Ysgol Dolwyddelan	Conwy
6622086	Ysgol Penmachno	Conwy
6622107	Ysgol Tal-y-Bont	Conwy
6622123	Ysgol Cerrigydrudion	Conwy
6622222	Ysgol Capel Garmon	Conwy
6622270	Ysgol Pentrefoelas	Conwy
6623021	Ysgol Llangelynnin	Conwy
6623032	Ysgol Ysbyty Ifan	Conwy
6623039	Ysgol Llanddoged	Conwy
6623340	Ysgol y Plas	Conwy
6632070	Ysgol Bodfari	Denbighshire
6632124	Ysgol Cefn Meiriadog	Denbighshire
6632164	Ysgol Gellifor	Denbighshire
6632168	Ysgol Pentrecelyn	Denbighshire
6632214	Ysgol Betws Gwerful Goch	Denbighshire
6632216	Ysgol Caer Drewyn	Denbighshire
6632267	Ysgol Bro Dyfrdwy	Denbighshire
6633044	Ysgol Llanbedr	Denbighshire
6633045	Ysgol Llanfair Dyffryn Clwyd	Denbighshire
6633057	Ysgol Pant Pastynog	Denbighshire
6642050	Rhos Helyg C.P. School	Flintshire
6642064	Ysgol y Foel	Flintshire
6642065	Brynford C.P. School	Flintshire
6652140	Llanarmon D.C. School	Wrexham
6653042	Eyton V.C. School	Wrexham
6653054	Borderbrook V.C. School	Wrexham
6653326	St Chad's V.A. School	Wrexham
6653347	St Paul's V.A.School	Wrexham
6662002	Abermule C.P. School	Powys
6662003	Arddleen C.P. School	Powys
6662004	Ysgol Gynradd Gymunedol Dyffryn Banw	Powys

6662005	Berriew C.P. School	Powys
6662008	Caersws C.P. School	Powys
6662009	Ysgol Gynradd Carno	Powys
6662018	Leighton C.P. School	Powys
6662019	Ysgol Llanbrynmair	Powys
6662020	Llandinam C.P. School	Powys
6662021	Ysgol Gynradd Llanfair Caereinion	Powys
6662033	Meifod C.P. School	Powys
6662041	Ysgol Pontrobert	Powys
6662044	Ysgol Dyffryn Trannon	Powys
6662049	Guilsfield C.P. School	Powys
6662051	Buttington Trewern C.P. School	Powys
6662053	Brynhafren C.P. School	Powys
6662054	Churchstoke C.P. School	Powys
6662057	Ysgol Gynradd Llanfyllin	Powys
6662058	Ysgol Gynradd Glantwymyn	Powys
6662059	Ysgol Pennant	Powys
6662066	Franksbridge C.P. School	Powys
6662068	Llanbister C.P. School	Powys
6662071	Llanfihangel Rhydithon C.P. School	Powys
6662076	Radnor Valley C.P. School	Powys
6662077	Crossgates C.P. School	Powys
6662084	Ysgol Dolafon	Powys
6662092	Sennybridge C.P. School	Powys
6662115	Cradoc C.P. School	Powys
6662122	Irfon Valley C.P. School	Powys
6662129	Ysgol Rhiw-Bechan	Powys
6662146	Llanrhaeadr ym Mochnant C.P. School	Powys
6663000	Llanfechain School	Powys
6663002	Montgomery School	Powys
6663016	Forden School	Powys
6663021	Llandysilio School	Powys
6663022	Castle Caereinion School	Powys
6663026	Gladestry School	Powys
6663031	Newbridge-On-Wye School	Powys
6663033	Clyro School	Powys
6663036	Rhayader School	Powys
6663037	Llanelwedd School	Powys
6663046	Llangedwyn School	Powys
6663301	St. Michael's School	Powys
6663303	Llansantffraid School	Powys
6663316	Llanbedr School	Powys
6663317	Archdeacon Griffiths Primary School	Powys
6665200	Ysgol Gynradd Llanerfyl	Powys
6672284	Ysgol Cilcennin	Ceredigion
6672285	Ysgol Ciliau Parc	Ceredigion

6672288	Ysgol Gynradd Dihewyd	Ceredigion
6672289	Ysgol Felinfach	Ceredigion
6672291	Ysgol Gynradd Llanarth	Ceredigion
6672293	Ysgol Llannon	Ceredigion
6672298	Ysgol Talgarreg	Ceredigion
6672303	Ysgol Comins Coch	Ceredigion
6672308	Ysgol Llanfarian	Ceredigion
6672309	Ysgol Llanfihangel-y-Creuddyn	Ceredigion
6672310	Ysgol Llangwryfon	Ceredigion
6672311	Ysgol Gynradd Llanilar	Ceredigion
6672312	Ysgol Mynach	Ceredigion
6672313	Ysgol Penllwyn	Ceredigion
6672315	Ysgol Syr John Rhys	Ceredigion
6672316	Ysgol Rhydypennau	Ceredigion
6672317	Ysgol Tal y bont	Ceredigion
6672320	Ysgol Beulah	Ceredigion
6672323	Ysgol Gynradd Llechryd	Ceredigion
6672324	Ysgol Gynradd Penparc	Ceredigion
6672345	Ysgol Trewen	Ceredigion
6672353	Ysgol Pontrhydfendigaid	Ceredigion
6672362	Ysgol Craig yr Wylfa	Ceredigion
6672363	Ysgol Penrhyn coch	Ceredigion
6672366	Ysgol Y Dderi	Ceredigion
6672367	Ysgol Cenarth	Ceredigion
6672369	Ysgol Bro Siôn Cwilt	Ceredigion
6672371	Ysgol T Llew Jones	Ceredigion
6672372	Ysgol Rhos Helyg	Ceredigion
6672373	Ysgol Dyffrfryn Cledlyn	Ceredigion
6673058	Ysgol Myfenydd	Ceredigion
6682209	Ysgol Eglwysrwrw	Pembrokeshire
6682223	Ysgol Brynconin	Pembrokeshire
6682231	Ysgol Llanychllwydog	Pembrokeshire
6682233	Ysgol Maenclochog	Pembrokeshire
6682250	Puncheston C.P. School	Pembrokeshire
6682253	St Dogmaels C.P. School	Pembrokeshire
6682254	Wolfscastle C.P. School	Pembrokeshire
6682261	Templeton C.P. School	Pembrokeshire
6682266	Tavernspite C.P. School	Pembrokeshire
6682270	Ysgol Croesgoch	Pembrokeshire
6682273	Roch C.P. School	Pembrokeshire
6682384	Coastlands C.P. School	Pembrokeshire
6682385	Ysgol Clydau	Pembrokeshire
6682390	Ysgol y Frenni	Pembrokeshire
6683035	Cilgerran School	Pembrokeshire
6683036	Cosheston School	Pembrokeshire
6683050	Spittal School	Pembrokeshire

6683058	Ger Y Llan School	Pembrokeshire
6683315	St.Aidan's School	Pembrokeshire
6683321	St Oswalds School	Pembrokeshire
6692002	Ysgol Maesybont	Carmarthenshire
6692014	Ysgol Gynradd Peniel	Carmarthenshire
6692034	Bancyfelin C.P. School	Carmarthenshire
6692037	Meidrim C.P. School	Carmarthenshire
6692065	Talley C.P. School	Carmarthenshire
6692067	Ysgol Cwrt Henri	Carmarthenshire
6692080	Llangadog C.P. School	Carmarthenshire
6692104	Ysgol Gynradd Brynsaron	Carmarthenshire
6692109	Llanpumsaint School	Carmarthenshire
6692119	Llanmiloe C.P. School	Carmarthenshire
6692166	Ysgol Llansteffan	Carmarthenshire
6692170	Abernant C.P. School	Carmarthenshire
6692180	Beca School	Carmarthenshire
6692182	Ysgol Gynradd Hafodwenog	Carmarthenshire
6692184	Ysgol Llanybydder	Carmarthenshire
6692185	Ysgol y Fro	Carmarthenshire
6692187	Cynwyl Elfed School	Carmarthenshire
6692384	Ysgol Griffith Jones	Carmarthenshire
6692386	Ysgol Carreg Hirfaen	Carmarthenshire
6692387	Ysgol Cae'r Felin	Carmarthenshire
6692389	Ysgol Bro Brynach	Carmarthenshire
6693000	Abergwili School	Carmarthenshire
6693002	Tremoilet School	Carmarthenshire
6693003	Laugharne School	Carmarthenshire
6693013	Ferryside School	Carmarthenshire
6693026	Ysgol Llanllwni	Carmarthenshire
6693307	Penboyr School	Carmarthenshire
6702133	Ysgol Gynradd Felindre	Swansea
6702167	Penclawdd C.P. School	Swansea
6702217	Knelston C.P. School	Swansea
6722275	Tynyrheol C.P. School	Bridgend
6732126	Llancarfan C.P. School	The Vale of Glamorgan
6762108	Fochriw C.P.School	Caerphilly
6792305	Cross Ash C. P. School	Monmouthshire