



# School Standards and Organisation (Wales) Act 2013

**2013 anaw 1**

An Act of the National Assembly for Wales to reform the powers of local authorities and the Welsh Ministers to intervene in the conduct of schools maintained by local authorities that are causing concern; to reform the powers of the Welsh Ministers to intervene in the exercise of education functions by local authorities; to provide for school improvement guidance; to reform the statutory arrangements for the organisation of maintained schools; to provide for Welsh in education strategic plans; to make miscellaneous provision in relation to maintained schools; and for connected purposes. [4 March 2013]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## **PART 1**

### INTRODUCTION

#### **1 Overview of this Act**

- (1) This Act has 6 Parts.
- (2) Part 2 is divided into 3 Chapters containing provisions concerned with maintaining and improving standards—
  - (a) in maintained schools, and
  - (b) in the exercise of education functions by local authorities.
- (3) Chapter 1 of Part 2 (including Schedule 1 )—
  - (a) sets out the grounds for intervention by local authorities and the Welsh Ministers in the conduct of maintained schools that are causing concern, and

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- (b) provides a range of intervention powers to enable local authorities and the Welsh Ministers to deal with the causes of concern.
- (4) Chapter 2—
- (a) sets out the grounds for intervention by the Welsh Ministers in the exercise of education functions by local authorities that are causing concern, and
  - (b) provides a range of intervention powers to enable the Welsh Ministers to deal with the causes of concern.
- (5) Chapter 3 makes provision for the Welsh Ministers to give guidance to the governing bodies of maintained schools, the head teachers of such schools and local authorities on how functions should be exercised with a view to improving the standard of education provided in maintained schools.
- (6) Part 3 is divided into 6 Chapters containing provision about the organisation of maintained schools.
- (7) Chapter 1 of Part 3 provides for a School Organisation Code about the exercise of functions under Part 3.
- (8) Chapter 2 (including Schedules 2 to 4) makes provision requiring the establishment, alteration and discontinuance of maintained schools in accordance with a specified process.
- (9) Chapter 3 provides for the rationalisation of school places if the Welsh Ministers are of the opinion that there is excessive or insufficient provision for primary or secondary education in maintained schools.
- (10) Chapter 4 provides for the making of regional provision for special educational needs.
- (11) Chapter 5 provides for powers for the Welsh Ministers to re-structure sixth form education.
- (12) Chapter 6 provides for miscellaneous and supplemental matters relating to school organisation.
- (13) Part 4 makes provision for Welsh in education strategic plans, which are to be—
- (a) prepared by local authorities,
  - (b) approved by the Welsh Ministers, and
  - (c) published and implemented by local authorities (sections 84, 85 and 87).
- (14) Part 4 also provides a power exercisable by regulations for the Welsh Ministers to require local authorities to carry out an assessment of the demand among parents for Welsh medium education for their children (section 86).
- (15) Part 5 makes provision about miscellaneous functions relating to maintained schools, including provision—
- (a) requiring local authorities to provide breakfasts for pupils at maintained primary schools at the request of the governing bodies of those schools (sections 88 to 90);
  - (b) amending the existing powers of local authorities and governing bodies to charge for school meals, so that—
    - (i) a related requirement to charge every person the same price for the same quantity of the same item is removed, and

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- (ii) a new requirement that the price charged for an item does not exceed the cost of providing that item is imposed (section 91);
  - (c) requiring local authorities to secure reasonable provision for a service providing counselling in respect of health, emotional and social needs for specified school pupils and other children (section 92);
  - (d) requiring governing bodies of maintained schools to hold a meeting if requested to do so by parents in a petition (section 94) and repealing an existing duty to hold an annual parents' meeting (section 95);
  - (e) repealing the Welsh Ministers' duty to issue a code of practice for securing effective relationships between local authorities and maintained schools (section 96).
- (16) Part 6—
- (a) introduces Schedule 5, which makes minor and consequential amendments to other legislation arising from the provisions of this Act;
  - (b) contains definitions that apply for the purposes of this Act generally and an index of definitions that apply to a number of provisions, but not the whole Act (section 98);
  - (c) contains other provisions which apply generally for the purposes of this Act.

VALID FROM 04/05/2013

**PART 2**

## STANDARDS

VALID FROM 20/02/2014

**CHAPTER 1**

## INTERVENTION IN CONDUCT OF MAINTAINED SCHOOLS

*Grounds for intervention***2 Grounds for intervention**

For the purposes of this Chapter, the grounds for intervention in the conduct of a maintained school are as follows—

**GROUND 1** -The standards of performance of pupils at the school are unacceptably low.

For this purpose, the standards of performance of pupils are low if they are low by reference to any one or more of the following—

- (a) the standards that the pupils might in all the circumstances reasonably be expected to attain;
- (b) where relevant, the standards previously attained by them;
- (c) the standards attained by pupils at comparable schools.

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GROUND 2 - There has been a breakdown in the way the school is managed or governed.

GROUND 3 - The behaviour of pupils at the school or any action taken by those pupils or their parents is severely prejudicing, or is likely to severely prejudice, the education of any pupils at the school.

GROUND 4 - The safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

GROUND 5 - The governing body or head teacher has failed, or is likely to fail, to comply with a duty under the Education Acts.

GROUND 6 - The governing body or head teacher has acted, or is proposing to act, unreasonably in the exercise of any of its or his or her functions under the Education Acts.

GROUND 7 - Her Majesty's Chief Inspector of Education and Training in Wales (“the Chief Inspector”) has given a notice under section 37(2) of the Education Act 2005 that the school requires significant improvement and that notice has not been superseded by—

- (a) the Chief Inspector giving notice under that section that special measures are required to be taken in relation to the school, or
- (b) a person making a subsequent inspection making a report stating that in his or her opinion the school no longer requires significant improvement.

GROUND 8 - Her Majesty's Chief Inspector of Education and Training in Wales has given a notice under section 37(2) of the Education Act 2005 that special measures are required to be taken in relation to the school and that notice has not been superseded by a person making a subsequent inspection making a report stating that in his or her opinion the school no longer requires special measures.

### *Intervention by a local authority*

### **3 Warning notice**

- (1) If a local authority is satisfied that one or more of grounds 1 to 6 exist in relation to one of its maintained schools, the authority may give a warning notice to the governing body of the school.
- (2) The local authority must specify each of the following in the warning notice—
  - (a) the grounds for intervention;
  - (b) the reasons why the authority is satisfied that the grounds exist;
  - (c) the action the authority requires the governing body to take in order to deal with the grounds for intervention;
  - (d) the period within which the action is to be taken by the governing body (“the compliance period”);
  - (e) the action the authority is minded to take if the governing body fails to take the required action.
- (3) If the local authority gives a warning notice to the governing body of a school, it must at the same time give a copy of the warning notice to—
  - (a) the head teacher;
  - (b) if the school is a foundation or voluntary school—

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- (i) the person who appoints the foundation governors, and
- (ii) if the school has a religious character, the appropriate religious body;
- (c) the Welsh Ministers.

#### **4 Power to intervene**

- (1) A local authority has the power to intervene in the conduct of one of its maintained schools under this Chapter if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
  - (a) the local authority has given a warning notice under section 3 to the governing body of the school, and
  - (b) the governing body has failed to comply, or secure compliance, with the notice to the authority's satisfaction within the compliance period.
- (3) This subsection applies if the local authority is satisfied that one or more of grounds 1 to 6 exist in relation to the school and it has reason to believe that there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter.
- (4) This subsection applies if—
  - (a) ground 7 (school requiring significant improvement) or ground 8 (school requiring special measures) exists in relation to the school, and
  - (b) a period of not less than 10 days has elapsed since the date on which the Chief Inspector gave notice to the local authority under section 37(2) of the Education Act 2005, subject to subsection (5).
- (5) The Welsh Ministers may, in relation to a particular school, determine that subsection (4) (b) has effect as if the reference to 10 days were to a shorter period specified in the determination.
- (6) Where a local authority has the power to intervene, it must keep the circumstances giving rise to the power under review.
- (7) If the authority concludes that the grounds for intervention have been dealt with to its satisfaction or that exercise of its powers under this Chapter would not be appropriate for any other reason, it must notify the governing body of its conclusion in writing.
- (8) If a local authority gives notice under subsection (7), it must at the same time send a copy of the notice to—
  - (a) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body, and
  - (b) the Welsh Ministers.
- (9) A local authority's power to intervene continues in effect until one of the following events takes place—
  - (a) the authority gives notice under subsection (7);

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- (b) the Welsh Ministers determine that the power to intervene is no longer in effect and give notice in writing to the local authority and the governing body of their determination;
  - (c) the Welsh Ministers give a warning notice to the governing body of the school under section 10.
- (10) A local authority which has the power to intervene is not limited to taking the action it said it was minded to take in a warning notice.

## 5 Power to require governing body to secure advice or collaborate

- (1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) The local authority may, with a view to improving the performance of the school, direct the governing body of the school to do either or both of the following—
- (a) enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature;
  - (b) exercise such of the powers under section 5(2) of the Education (Wales) Measure 2011 (powers to collaborate) as are specified in the direction, subject to provision made in regulations under section 6 of that Measure.
- (3) Before giving a direction the local authority must consult—
- (a) the governing body of the school, and
  - (b) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body.
- (4) A direction under subsection (2)(a) may require the contract or other arrangement to contain specified terms and conditions.

## 6 Power to appoint additional governors

- (1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.
- (2) The local authority may appoint as many additional governors to the governing body of the school as it thinks fit; and the instrument of government for the school has effect as if it provided for such appointments (despite anything in regulations under section 19 of the Education Act 2002).
- (3) The local authority may nominate one of those governors to be the chair of the governing body in place of any person who has been elected as chair of that body.
- (4) Before making any such appointment or nomination in relation to a voluntary aided school, the local authority must consult—
- (a) the person who appoints the foundation governors, and
  - (b) if the school has a religious character, the appropriate religious body.
- (5) A governor appointed under this section is to hold office for a period determined by the local authority.

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(6) A governor nominated by the local authority to be the chair of the governing body is to be the chair for a period determined by the local authority.

(7) The local authority may pay remuneration and allowances to governors appointed under this section.

#### **7 Power of local authority to constitute governing body of interim executive members**

(1) This section applies if a local authority has the power to intervene in the conduct of one of its maintained schools.

(2) The local authority may give the governing body of the school a notice in writing stating that, as from a date specified in the notice, the governing body is to be constituted in accordance with Schedule 1 (governing bodies consisting of interim executive members).

(3) Before giving a notice the local authority must—

- (a) consult the governing body of the school,
- (b) in the case of a foundation or voluntary school, consult—
  - (i) the person who appoints the foundation governors, and
  - (ii) if the school has a religious character, the appropriate religious body, and
- (c) obtain the consent of the Welsh Ministers.

#### **8 Power of local authority to suspend right to delegated budget**

(1) This section applies if—

- (a) a local authority has the power to intervene in the conduct of a maintained school, and
- (b) the school has a delegated budget within the meaning of Part 2 of the School Standards and Framework Act 1998.

(2) The local authority may suspend the governing body's right to a delegated budget by giving the governing body notice of the suspension.

(3) The suspension of the right to a delegated budget takes effect on receipt of the notice by the governing body.

(4) If the local authority gives a notice suspending the right to a delegated budget, it must give a copy of the notice to the head teacher at the same time.

(5) A suspension imposed under this section has effect for the purposes of Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools) as if made under paragraph 1 of Schedule 15 to that Act (suspension of financial delegation).

#### **9 General power to give directions and take steps**

(1) This section applies if the local authority has the power to intervene in the conduct of one of its maintained schools.

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- (2) If the local authority thinks it is appropriate for the purposes of dealing with the grounds for intervention, the authority may—
- (a) give directions to the governing body or head teacher, or
  - (b) take any other steps.

### *Intervention by the Welsh Ministers*

#### **10 Warning notice**

- (1) The Welsh Ministers may give a warning notice to the governing body of a maintained school if—
- (a) they are satisfied that one or more of grounds 1 to 6 exist in relation to the school, and
  - (b) the local authority that maintains the school either—
    - (i) has not given a warning notice to the governing body under section 3 on one or more of those grounds, or
    - (ii) has given a warning notice, but in terms that are inadequate in the opinion of the Welsh Ministers.
- (2) The Welsh Ministers must specify each of the following in the warning notice—
- (a) the grounds for intervention;
  - (b) the reasons why they are satisfied that the grounds exist;
  - (c) the action they require the governing body to take in order to deal with the grounds for intervention;
  - (d) the period within which the action is to be taken by the governing body (“the compliance period”);
  - (e) the action they are minded to take if the governing body fails to take the required action.
- (3) If the Welsh Ministers give a warning notice to the governing body of a school, they must at the same time as they give the warning notice to the governing body give a copy of the warning notice to—
- (a) the local authority;
  - (b) the head teacher;
  - (c) if the school is a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body.

#### **11 Power of the Welsh Ministers to intervene**

- (1) The Welsh Ministers have the power to intervene in the conduct of a maintained school under this Chapter if subsection (2), (3), (4) or (5) applies.
- (2) This subsection applies if—
- (a) the local authority has given a warning notice under section 3 to the governing body of the school,



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- (b) the governing body has failed to comply, or secure compliance, with the notice to the Welsh Ministers' satisfaction within the compliance period, and
  - (c) the Welsh Ministers are satisfied that the local authority has not taken, and is not likely to take, adequate action for the purposes of dealing with the grounds for intervention.
- (3) This subsection applies if—
- (a) the Welsh Ministers have given a warning notice under section 10 to the governing body of the school, and
  - (b) the governing body has failed to comply, or secure compliance, with the notice to the Welsh Ministers' satisfaction within the compliance period.
- (4) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 6 exist in relation to the school and they have reason to believe that there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter.
- (5) This subsection applies if—
- (a) ground 7 (school requiring significant improvement) or ground 8 (school requiring special measures) exists in relation to the school, and
  - (b) a period of not less than 10 days has elapsed since the date on which the Chief Inspector gave notice to the Welsh Ministers under section 37(2) of the Education Act 2005, subject to subsection (6).
- (6) The Welsh Ministers may, in relation to a particular school, determine that subsection (5) (b) has effect as if the reference to 10 days were to a shorter period specified in the determination.
- (7) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.
- (8) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that exercise of their powers under this Chapter would not be appropriate for any other reason, they must notify the governing body and the local authority of their conclusion in writing.
- (9) If the Welsh Ministers give notice under subsection (8) in relation to a foundation or voluntary school, they must at the same time, send a copy of the notice to—
- (a) the person who appoints the foundation governors, and
  - (b) if the school has a religious character, the appropriate religious body.
- (10) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (8).
- (11) Where the Welsh Ministers have the power to intervene they are not limited to taking the action they said they were minded to take in a warning notice.

## **12 Power to require governing body to secure advice or collaborate**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.
- (2) The Welsh Ministers may, with a view to improving the performance of the school, direct the governing body of the school to do either or both of the following—

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- (a) enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature;
  - (b) exercise such of the powers under section 5(2) of the Education (Wales) Measure 2011 (powers to collaborate) as are specified in the direction, subject to provision made in regulations under section 6 of that Measure.
- (3) Before giving a direction the Welsh Ministers must consult—
- (a) the governing body of the school, and
  - (b) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body.
- (4) A direction under subsection (2)(a) may require the contract or other arrangement to contain specified terms and conditions.

### **13 Power of Welsh Ministers to appoint additional governors**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.
- (2) The Welsh Ministers may appoint as many additional governors to the governing body of the school as they think fit; and the instrument of government for the school has effect as if it provided for such appointments (despite anything in the regulations under section 19 of the Education Act 2002).
- (3) The Welsh Ministers may nominate one of those governors to be the chair of the governing body in place of any person who has been elected as chair of that body.
- (4) Before making any such appointment or nomination in relation to a voluntary aided school, the Welsh Ministers must consult—
  - (a) the person who appoints the foundation governors, and
  - (b) if the school has a religious character, the appropriate religious body.
- (5) A governor appointed under this section is to hold office for a period determined by the Welsh Ministers.
- (6) A governor nominated by the Welsh Ministers to be the chair of the governing body is to be the chair for a period determined by the Welsh Ministers.
- (7) The Welsh Ministers may pay remuneration and allowances to governors appointed under this section.
- (8) Where the Welsh Ministers have exercised their power under this section in relation to any school—
  - (a) the local authority may not suspend the governing body's right to a delegated budget under paragraph 1 of Schedule 15 to the School Standards and Framework Act 1998, and
  - (b) if the local authority has already exercised that power or its power under section 8, the Welsh Ministers may revoke the suspension.
- (9) Where the Welsh Ministers have exercised their power under this section in relation to a voluntary aided school, nothing in regulations under section 19 of the Education

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Act 2002 is to be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Welsh Ministers under this section.

- (10) The revocation of a suspension under subsection (8)(b)—
- (a) must be notified to the local authority in writing, and
  - (b) takes effect from the date specified in that notification.

#### **14 Power of Welsh Ministers to constitute governing body of interim executive members**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.
- (2) The Welsh Ministers may give the governing body of the school a notice in writing stating that, as from the date specified in the notice, the governing body is to be constituted in accordance with Schedule 1 (governing bodies consisting of interim executive members).
- (3) Before giving a notice the Welsh Ministers must consult—
  - (a) the local authority that maintains the school,
  - (b) the governing body of the school, and
  - (c) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body.
- (4) The Welsh Ministers are not obliged to consult the persons mentioned in subsection (3)(b) and (c) if the local authority has consulted them about the constitution of a governing body under section 7 on the basis of a power to intervene brought to an end by effect of section 4(9)(b) or (c).

#### **15 Power of Welsh Ministers to direct federation of schools**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school (“the school causing concern”).
- (2) The Welsh Ministers may direct any of the following persons to provide for one or more of the arrangements set out in subsection (3)—
  - (a) a local authority;
  - (b) a governing body of a maintained school;
  - (c) a governing body of a federation.
- (3) The arrangements are—
  - (a) the federation of the school causing concern and one or more maintained schools;
  - (b) the federation of the school causing concern and an existing federation;
  - (c) the federation of the school causing concern and an existing federation and one or more maintained schools;
  - (d) where the school causing concern is part of a federation, the federation of that federation and one or more maintained schools;

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- (e) where the school causing concern is part of a federation, the federation of that federation and another existing federation;
  - (f) where the school causing concern is part of a federation, the federation of that federation and an existing federation and one or more maintained schools;
  - (g) where the school causing concern is part of a federation, for the school to leave that federation.
- (4) Before giving a direction under subsection (2), the Welsh Ministers must consult—
- (a) the local authority,
  - (b) the governing bodies concerned, and
  - (c) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body.
- (5) In this section “federation” has the meaning given by section 21(1) of the Education (Wales) Measure 2011.

## **16 Power of Welsh Ministers to direct closure of school**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school on the basis of ground 8 (school requiring special measures).
- (2) The Welsh Ministers may give a direction to the local authority requiring the school to be discontinued on a date specified in the direction.
- (3) Before giving a direction under subsection (2), the Welsh Ministers must consult—
- (a) the local authority that maintains the school,
  - (b) the governing body of the school,
  - (c) in the case of a foundation or voluntary school—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body, and
  - (d) any other persons the Welsh Ministers consider appropriate.
- (4) On giving a direction to discontinue the school, the Welsh Ministers must also give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where the local authority is given a direction under subsection (2), it must discontinue the school in question on the date specified in the direction; and nothing in Part 3 applies to the discontinuance of the school under this section.
- (6) In this section any reference to the discontinuance of a maintained school is to the local authority ceasing to maintain it.

## **17 General power to give directions and take steps**

- (1) This section applies if the Welsh Ministers have the power to intervene in the conduct of a maintained school.

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- (2) If the Welsh Ministers think it is appropriate for the purposes of dealing with the grounds for intervention, the Welsh Ministers may—
- (a) give directions to the governing body or head teacher, or
  - (b) take any other steps.

### *Supplementary*

#### **18 Governing bodies consisting of interim executive members**

Schedule 1 (appointment of members of interim executive boards, the functions of boards, their procedures and related matters) has effect.

#### **19 Directions**

- (1) A governing body of a maintained school or a head teacher subject to a direction under this Chapter must comply with it.
- (2) This includes a direction to exercise a power or duty that is contingent upon the opinion of the governing body or head teacher.
- (3) A direction under this Chapter—
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the person who gave the direction.

#### **20 Guidance**

In exercising its functions under this Chapter, a local authority must have regard to guidance given by the Welsh Ministers.

VALID FROM 20/02/2014

## **CHAPTER 2**

### **INTERVENTION IN LOCAL AUTHORITIES**

#### *Grounds for intervention*

#### **21 Grounds for intervention**

For the purposes of this Chapter, the grounds for intervention in the exercise by a local authority of its education functions are as follows—

GROUND 1 - The local authority has failed, or is likely to fail, to comply with a duty that is an education function.

GROUND 2 - The local authority has acted, or is proposing to act, unreasonably in the exercise of an education function.

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GROUND 3 - The local authority is failing, or is likely to fail, to perform an education function to an adequate standard.

*Warning notice*

**22 Warning notice**

- (1) The Welsh Ministers may give a warning notice to a local authority if they are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority.
- (2) The Welsh Ministers must specify each of the following in the warning notice—
  - (a) the grounds for intervention;
  - (b) the reasons why they are satisfied that the grounds exist;
  - (c) the action they require the local authority to take in order to deal with the grounds for intervention;
  - (d) the period within which the action is to be taken by the local authority (“the compliance period”);
  - (e) the action they are minded to take if the local authority fails to take the required action.

*Powers of intervention*

**23 Power of Welsh Ministers to intervene**

- (1) The Welsh Ministers have the power to intervene under this Chapter in the exercise of education functions by a local authority if subsection (2) or (3) applies.
- (2) This subsection applies if—
  - (a) the Welsh Ministers have given a warning notice, and
  - (b) the local authority has failed to comply, or secure compliance, with the notice to the Welsh Ministers' satisfaction within the compliance period.
- (3) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority and they have reason to believe that—
  - (a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Chapter, or
  - (b) the local authority is unlikely to be able to comply, or secure compliance, with a warning notice.
- (4) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.
- (5) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that exercise of their powers under this Chapter would not be appropriate for any other reason, they must notify the local authority of their conclusion in writing.
- (6) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (5).



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- (7) Where the Welsh Ministers have the power to intervene, they are not limited to taking the action they said they were minded to take in a warning notice.

#### **24 Power to require local authority to obtain advisory services**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may direct the local authority to enter into a contract or other arrangement with a specified person, or a person falling within a specified class for the provision to the authority or the governing body of a school maintained by it (or both), of specified services of an advisory nature.
- (3) The direction may require the contract or other arrangement to contain specified terms and conditions.
- (4) In this section “specified” means specified in a direction under this section.

#### **25 Power to require performance of functions by other persons on behalf of authority**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may give such directions to the local authority or any of its officers as they think are appropriate for securing that the functions to which the grounds for intervention relate are performed on behalf of the authority by a person specified in the direction.
- (3) A direction under subsection (2) may require that any contract or other arrangement made by the authority with the specified person contains terms and conditions specified in the direction.

#### **26 Power to require performance of functions by Welsh Ministers or nominee**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) The Welsh Ministers may direct that the functions to which the grounds for intervention relate are to be exercised by the Welsh Ministers or a person nominated by them.
- (3) If a direction is made under subsection (2), the local authority must comply with the instructions of the Welsh Ministers or their nominee in relation to the exercise of the functions.

#### **27 Power to direct exercise of other education functions**

- (1) If the Welsh Ministers think it is expedient, a direction under section 25 or 26 may relate to the performance of education functions in addition to the functions to which the grounds for intervention relate.

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- (2) The Welsh Ministers may have regard (among other things) to financial considerations in deciding whether it is expedient that a direction should relate to education functions other than functions relating to the grounds for intervention.

## 28 General power to give directions and take steps

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of education functions by a local authority.
- (2) If the Welsh Ministers think it is appropriate in order to deal with the grounds for intervention, the Welsh Ministers may—
- (a) give directions to the local authority or any of its officers, or
  - (b) take any other steps.

### *Supplementary*

## 29 Directions

- (1) A local authority, or an officer of an authority, subject to a direction or instruction under this Chapter must comply with it.
- (2) This includes a direction or an instruction to exercise a power or duty that is contingent upon the opinion of the local authority or an officer of the authority.
- (3) A direction under this Chapter—
- (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

## 30 Duty to co-operate

- (1) A local authority and the governing body of a maintained school must give the Welsh Ministers and any person specified in subsection (3) as much assistance in connection with the exercise of functions under or by virtue of this Chapter as they are reasonably able to give.
- (2) The governing body of a maintained school and the local authority that maintains the school must also secure, so far as reasonably practicable, that persons who work at the school do the same.
- (3) The specified persons are—
- (a) any person authorised for the purposes of this section by the Welsh Ministers;
  - (b) any person acting under directions under this Chapter;
  - (c) any person assisting—
    - (i) the Welsh Ministers, or
    - (ii) a person mentioned in paragraph (a) or (b).



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### **31 Powers of entry and inspection**

- (1) A person falling within subsection (2) has at all reasonable times—
- (a) a right of entry to the premises of the local authority in question and any school maintained by it;
  - (b) a right to inspect, and take copies of, any records or other documents kept by the authority or any school maintained by it, and any other documents containing information relating to the authority or any such school, which the person considers relevant to the exercise by the person of functions under or by virtue of this Chapter.
- (2) The following persons fall within this subsection—
- (a) the person specified in a direction under section 24 or, where the direction specifies a class of persons, the person with whom the local authority enter into the contract or other arrangement required by the direction;
  - (b) the person specified in a direction under section 25;
  - (c) the Welsh Ministers in pursuance of a direction under section 26;
  - (d) the person nominated by direction under section 26.
- (3) In exercising the right under subsection (1)(b) to inspect records or other documents, a person (“P”)—
- (a) is entitled to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
  - (b) may require the following persons to provide any assistance P may reasonably require (including, among other things, the making of information available for inspection or copying in a legible form)—
    - (i) the person by whom or on whose behalf the computer is or has been so used;
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (4) Any reference in this section to a person falling within subsection (2) includes a reference to any person assisting that person.
- (5) In this section “document” and “records” each include information recorded in any form.

## **CHAPTER 3**

### **SCHOOL IMPROVEMENT GUIDANCE**

### **32 Meaning of “school authority”**

In this Chapter “school authority” means—

- (a) a local authority in the exercise of its education functions;
- (b) the governing body of a maintained school;
- (c) the head teacher of a maintained school.

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### **33 Power to issue school improvement guidance**

- (1) The Welsh Ministers may issue guidance to a school authority on how the authority should exercise its functions with a view to improving the standard of education provided by any maintained school in respect of which the authority exercises functions (“school improvement guidance”).
- (2) The Welsh Ministers—
  - (a) may issue school improvement guidance to school authorities generally or to one or more particular authorities;
  - (b) may issue different school improvement guidance to different school authorities;
  - (c) may revise or revoke school improvement guidance by further guidance;
  - (d) may revoke school improvement guidance by issuing a notice to the school authorities to which it is directed.
- (3) The Welsh Ministers must ensure that school improvement guidance, or a notice revoking such guidance, states—
  - (a) that it is issued under this section, and
  - (b) the date on which it is to take effect.
- (4) The Welsh Ministers must arrange for school improvement guidance, or a notice revoking such guidance, to be published.

### **34 Consultation and National Assembly for Wales procedures**

- (1) Before issuing or revising school improvement guidance, the Welsh Ministers must consult the following persons on a draft of the guidance—
  - (a) school authorities likely to be affected by the guidance,
  - (b) Her Majesty's Chief Inspector of Education and Training in Wales, and
  - (c) any other person the Welsh Ministers consider appropriate.
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the guidance, the Welsh Ministers must not issue it in the form of that draft.
- (4) If no such resolution is made before the end of that period, the Welsh Ministers must issue the guidance (or revised guidance) in the form of the draft.
- (5) The 40 day period—
  - (a) begins on the day on which the draft is laid before the National Assembly, and
  - (b) does not include any time during which the National Assembly is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent a new draft of proposed guidance or proposed revised guidance from being laid before the National Assembly.

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### **35 Duty to follow school improvement guidance**

- (1) A school authority must follow the course set out in school improvement guidance issued to it in accordance with this Chapter when exercising a power or duty (including a power or duty that is contingent upon the opinion of the school authority); but this is subject to the following provisions of this section.
- (2) A school authority that is a local authority is not subject to the duty under subsection (1) so far as—
  - (a) the authority thinks there is good reason for it not to follow the guidance in particular categories of case or at all,
  - (b) it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the guidance, and
  - (c) a policy statement issued by the authority in accordance with section 36 is in effect.
- (3) A school authority that is the governing body of a maintained school or its head teacher is not subject to the duty under subsection (1) so far as—
  - (a) the governing body thinks there is good reason for it or the head teacher not to follow the guidance in particular categories of case or at all,
  - (b) the governing body decides on an alternative policy for the exercise of its, or the head teacher's, functions in respect of the subject matter of the guidance, and
  - (c) a policy statement issued by the governing body in accordance with section 36 is in effect.
- (4) Where subsection (2) or (3) applies in the case of a school authority, the authority—
  - (a) must follow the course set out in the policy statement, and
  - (b) is subject to the duty under subsection (1) only so far as the subject matter of the school improvement guidance is not displaced by the policy statement.
- (5) The duties in subsections (1) and (4) do not apply to a school authority so far as it would be unreasonable for the authority to follow the school improvement guidance or policy statement in a particular case or category of case.

### **36 Policy statements: requirements and ancillary powers**

- (1) A policy statement issued under section 35(2) or (3) must set out—
  - (a) how the local authority or governing body (as the case may be) proposes that functions should be exercised differently from the course set out in the school improvement guidance, and
  - (b) the authority's or the body's reasons for proposing that different course.
- (2) An authority or body that has issued a policy statement may—
  - (a) issue a revised policy statement;
  - (b) give notice revoking a policy statement.
- (3) A policy statement (or revised statement) must state—
  - (a) that it is issued under section 35(2) or (3) (as the case may be), and
  - (b) the date on which it is to take effect.
- (4) The authority or body that issues a policy statement (or revised statement), or gives a notice under subsection (2)(b), must—

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- (a) arrange for a statement or notice to be published;
- (b) send a copy of any statement or notice to the Welsh Ministers.

### 37 Directions

- (1) Subsection (2) applies if, in relation to a policy statement issued by a school authority, the Welsh Ministers consider that the authority's alternative policy for the exercise of functions (in whole or in part) is not likely to improve the standard of education provided at a school to which the policy statement relates.
- (2) The Welsh Ministers may direct the school authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the exercise of functions by the authority in accordance with the school improvement guidance issued to the authority in accordance with this Chapter.
- (3) A school authority subject to a direction under this section must comply with it.
- (4) This includes a direction to exercise a power or duty that is contingent upon the opinion of the school authority.
- (5) A direction under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

VALID FROM 26/04/2013

## PART 3

### SCHOOL ORGANISATION

#### CHAPTER 1

##### SCHOOL ORGANISATION CODE

### 38 School Organisation Code

- (1) The Welsh Ministers must issue, and may from time to time revise, a code on school organisation (“the Code”).
- (2) The Code is to contain provision about the exercise of the functions of the following persons under this Part—
  - (a) the Welsh Ministers;
  - (b) local authorities;
  - (c) governing bodies of maintained schools;
  - (d) other persons in connection with proposals made (or to be made) by them under this Part.

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- (3) The Code may impose requirements, and may include guidelines setting out aims, objectives and other matters.
- (4) The persons referred to in subsection (2) must, when exercising functions under this Part—
  - (a) act in accordance with any relevant requirements contained in the Code, and
  - (b) have regard to any relevant guidelines contained in it.
- (5) The duty imposed by subsection (4) also applies to a person exercising a function for the purpose of the discharge of functions under this Part by—
  - (a) the Welsh Ministers,
  - (b) a local authority,
  - (c) the governing body of a maintained school, or
  - (d) other persons in connection with proposals made (or to be made) by them under this Part.
- (6) The Welsh Ministers must publish the Code for the time being in force on their website.
- (7) The Welsh Ministers may make separate provision (by means of separate codes) in relation to different functions under this Part of the persons mentioned in subsection (2).
- (8) References in this section to “the Code” or to functions under this Part have effect, in relation to a separate code, as references to that code or to functions under this Part to which it relates.

### **39 Making and approval of School Organisation Code**

- (1) Before issuing or revising a code under section 38, the Welsh Ministers must consult the following persons on a draft of the code (or revised code)—
  - (a) each local authority,
  - (b) the governing body of each maintained school,
  - (c) Her Majesty's Chief Inspector of Education and Training in Wales, and
  - (d) any other person the Welsh Ministers consider appropriate.
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the code, the Welsh Ministers must not issue the proposed code in the form of that draft.
- (4) If no such resolution is made before the end of that period—
  - (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and
  - (b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.
- (5) The 40 day period—
  - (a) begins on the day on which the draft is laid before the National Assembly for Wales, and

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- (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent a new draft of a proposed code from being laid before the National Assembly.
- (7) References in this section to a proposed code include a proposed revised code.
- (8) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part even though the code issued under section 38(1) takes account (to any extent) of any provision made by this Part.

VALID FROM 01/10/2013

## CHAPTER 2

### SCHOOL ORGANISATION PROPOSALS

#### *Establishment, alteration and discontinuance of maintained schools*

#### **40 Restriction on establishment, alteration and discontinuance of maintained schools**

- (1) A new community school, voluntary school or community special school may be established in Wales only in accordance with this Part.
- (2) No new foundation school or foundation special school may be established in Wales.
- (3) A maintained school may be discontinued only in accordance with this Part.
- (4) An alteration which is a regulated alteration in relation to the type of school in question may be made to a maintained school only in accordance with this Part.
- (5) No alteration may be made to a maintained school that changes the religious character of the school or causes a school to acquire or lose a religious character.
- (6) Subsection (3) has effect subject to section 16(5) (power of Welsh Ministers to direct closure of school).
- (7) Schedule 2 (which describes regulated alterations) has effect.

#### **41 Proposals to establish mainstream schools**

- (1) A local authority may make proposals to establish—
  - (a) a new community school, or
  - (b) a new maintained nursery school.
- (2) Any person may make proposals to establish a new voluntary school.

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#### **42 Proposals to alter mainstream schools**

- (1) A local authority may make proposals—
  - (a) to make a regulated alteration to a community school;
  - (b) with the consent of the Welsh Ministers, to make an alteration described in paragraph 6 of Schedule 2 (opening or closing a school's sixth form) to a voluntary or foundation school;
  - (c) to make an alteration described in paragraph 10, 11, 12 or 13 of Schedule 2 (increasing and reducing capacity) to a voluntary or foundation school if that school does not have a religious character;
  - (d) to make a regulated alteration to a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to make a regulated alteration to the school.

#### **43 Proposals to discontinue mainstream schools**

- (1) A local authority may make proposals to discontinue—
  - (a) a community, foundation or voluntary school, or
  - (b) a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to discontinue the school.

#### **44 Proposals to establish, alter or discontinue community special schools**

- A local authority may make proposals—
- (a) to establish a new community special school,
  - (b) to make a regulated alteration to such a school, or
  - (c) to discontinue such a school.

#### *Changes of category*

#### **45 Proposals to change a school's category**

- (1) The governing body of a community school may make proposals for the school to become a voluntary aided school or a voluntary controlled school.
- (2) The governing body of a voluntary aided school may make proposals for the school to become a community school or a voluntary controlled school (but see subsection (5)).
- (3) The governing body of a voluntary controlled school may make proposals for the school to become a community school or a voluntary aided school (but see subsection (5)).
- (4) The governing body of a foundation school may make proposals for the school to become a community school, a voluntary aided school or a voluntary controlled school (but see subsection (5)).
- (5) No proposals may be made for a foundation or voluntary school which has a religious character to become a community school.



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#### **46 Restrictions on changing category of school**

- (1) A maintained school within one of the categories set out in section 20(1) of the School Standards and Framework Act 1998 may become a school within another of those categories (except a foundation school or foundation special school) only in accordance with this Part.
- (2) A school may not change category to become a voluntary aided school unless the governing body of the school satisfies the Welsh Ministers that it will be able to carry out its obligations under Schedule 3 to the School Standards and Framework Act 1998 (funding of voluntary aided schools) for a period of at least five years following the date on which it is proposed that the change of category is to take place.
- (3) A voluntary or foundation school may not become a community school unless any transfer agreement and transfer of rights and liabilities agreement required by Part 3 of Schedule 4 has been entered into.

#### **47 Effect of change of category**

- (1) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising or requiring any change in the character of the school (including, in particular, any religious character of the school).
- (2) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising a school to establish, join or leave a foundation body.

#### *Publication, consultation and objections*

#### **48 Publication and consultation**

- (1) A proposer must publish proposals made under this Chapter in accordance with the Code.
- (2) Before publishing proposals made under this Chapter, a proposer must consult on its proposals in accordance with the Code.
- (3) The requirement to consult does not apply to proposals to discontinue a school which is a small school (see section 56).
- (4) Before the end of 7 days beginning with the day on which they were published, the proposer must send copies of the published proposals to—
  - (a) the Welsh Ministers, and
  - (b) the local authority (if it is not the proposer) that maintains, or that it is proposed will maintain, the school to which the proposals relate.
- (5) The proposer must publish a report on the consultation it has carried out in accordance with the Code.

#### **49 Objections**

- (1) Any person may object to proposals published under section 48.



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- (2) Objections must be sent in writing to the proposer before the end of 28 days beginning with the day on which the proposals were published (“the objection period”).
- (3) The proposer must publish a summary of all objections made in accordance with subsection (2) (and not withdrawn) and its response to those objections—
  - (a) in the case of a local authority that is required to determine its own proposals under section 53, before the end of 7 days beginning with the day of its determination under section 53(1), and
  - (b) in all other cases, before the end of 28 days beginning with the end of the objection period.

### *Approval and determination of proposals*

## **50 Approval by Welsh Ministers**

- (1) Proposals published under section 48 require approval under this section 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 in accordance with section 49(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.
- (2) 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.
- (3) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (4) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.
- (4) The documents are—
  - (a) the report published under section 48(5),
  - (b) the published proposals,
  - (c) any objections made in accordance with section 49(2) (and not withdrawn), and
  - (d) where objections have been so made (and not withdrawn), the response published under section 49(3).
- (5) Where proposals require approval under this section, the Welsh Ministers may—
  - (a) reject the proposals,
  - (b) approve them without modification, or
  - (c) approve them with modifications—
    - (i) after obtaining the consent of the proposer to the modifications, and
    - (ii) (except where the governing body or local authority, as the case may be, is the proposer), after consulting the governing body (if

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any) of the school to which the proposals relate and the relevant local authority.

- (6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (7) The Welsh Ministers may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.
- (8) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the Welsh Ministers at any time before they are approved under this section.
- (9) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56).
- (10) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.

## **51 Approval by local authority**

- (1) Proposals published under section 48 require approval under this section if—
  - (a) they do not require approval under section 50,
  - (b) they have been made by a proposer other than the relevant local authority, and
  - (c) an objection to the proposals has been made in accordance with section 49(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.
- (2) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (3) to the relevant local authority before the end of 35 days beginning with the end of the objection period.
- (3) The documents are—
  - (a) the report published under section 48(5),
  - (b) the published proposals,
  - (c) objections made in accordance with section 49(2) (and not withdrawn), and
  - (d) the response published under section 49(3).
- (4) Where proposals require approval under this section, the relevant local authority may—
  - (a) reject the proposals,
  - (b) approve them without modification, or
  - (c) approve them with any of the modifications specified in subsection (5)—
    - (i) after obtaining the consent of the Welsh Ministers and the proposer to the modifications, and
    - (ii) (except where the governing body is the proposer) after consulting the governing body (if any) of the school to which the proposals relate.
- (5) The relevant local authority may modify—
  - (a) the date or dates specified in the published proposals as the date or dates on which the proposals are planned to be implemented;

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- (b) the number of pupils specified in the published proposals as the number to be admitted to the school (in any age group and in any school year).
- (6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (7) The relevant local authority may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.
- (8) The relevant local authority must make a determination under subsection (4) whether to reject or approve the proposals before the end of 16 weeks beginning with the end of the objection period.
- (9) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the relevant local authority at any time before they are approved under this section.
- (10) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56).
- (11) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.

## 52 Related proposals

- (1) A proposer must send to the Welsh Ministers proposals (“proposals B”) it has made if—
  - (a) it considers that they are related to proposals requiring approval under section 50 (“proposals A”), and
  - (b) the proposer has not determined whether to implement proposals B under section 53 before the Welsh Ministers approve or reject proposals A.
- (2) If the Welsh Ministers consider that proposals B are related to proposals A, proposals B are to be treated as requiring approval under section 50.
- (3) A proposer must send to a local authority proposals (“proposals D”) it has made if—
  - (a) it considers that they are related to proposals requiring the local authority's approval under section 51 (“proposals C”), and
  - (b) the proposer has not determined whether to implement proposals D under section 53 before the local authority approves or rejects proposals C.
- (4) If the local authority considers that proposals D are related to proposals C, proposals D are to be treated as requiring approval under section 51.
- (5) The Welsh Ministers may require any other proposals to be treated as requiring approval under section 50 if—
  - (a) they consider that they are related to proposals requiring their approval under section 50, and
  - (b) the proposer has not determined whether to implement them under section 53 before the Welsh Ministers approve or reject the proposals requiring approval.
- (6) A local authority may require any other proposals to be treated as requiring approval under section 51 if—

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- (a) it considers that they are related to proposals requiring its approval under section 51, and
  - (b) the proposer has not determined whether to implement them under section 53 before the local authority approves or rejects the proposals requiring approval.
- (7) This section does not apply to proposals referred to a local inquiry under section 61 (local inquiry into proposals for the rationalisation of school places).

### 53 Determination

- (1) Where any proposals published under section 48 do not require approval under section 50 or 51, the proposer must determine whether the proposals should be implemented.
- (2) If a determination under subsection (1) is not made before the end of 16 weeks beginning with the end of the objection period, the proposer is to be taken to have withdrawn the proposals.
- (3) Before the end of 7 days beginning with the day of its determination under subsection (1), the proposer must notify the following of the determination—
- (a) the Welsh Ministers;
  - (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;
  - (c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.

### 54 Referral to the Welsh Ministers

- (1) This section applies if a local authority has—
- (a) determined to approve or reject proposals under section 51(4), or
  - (b) determined under section 53(1) to implement proposals to which there was an objection made in accordance with section 49 (and which was not withdrawn in writing before the end of 28 days beginning with the end of the objection period).
- (2) Before the end of 28 days beginning with the day of the local authority's determination under section 51(4) or 53(1), the following may refer the proposals to the Welsh Minister—
- (a) another local authority which is likely to be affected by the proposals;
  - (b) a local authority in England which is likely to be affected by the proposals ;
  - (c) the appropriate religious body for—
    - (i) the school to which the proposals relate if it is, or is intended to be, a school which has a religious character, or
    - (ii) any other school which has a religious character and which is likely to be affected by the proposals;
  - (d) if the school to which the proposals relate is a foundation or voluntary school, the governing body of the school;
  - (e) a trust holding property for the purpose of the school to which the proposals relate;

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- (f) an institution within the further education sector which is likely to be affected by the proposals.
- (3) Whether an authority, school or institution is likely to be affected by the proposals for the purpose of subsection (2) is a question to be determined by the Welsh Ministers.
- (4) The Welsh Ministers must consider proposals referred to them under this section afresh and subsections (5) to (8) of section 50 apply as if the proposals required their approval under that section.
- (5) 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.
- (6) Proposals which the Welsh Ministers are required to consider under this section are not to be treated for the purposes of section 55 or 61 as proposals approved under section 51 or as proposals that the proposer has determined to implement under section 53.
- (7) Proposals approved in accordance with this section are to be treated for the purposes of section 55 as proposals approved under section 50.
- (8) Proposals rejected in accordance with this section are to be treated for the purposes of paragraph 35(3)(e) of Schedule 4 as proposals rejected under section 50.

## 55 Implementation

- (1) This section applies to—
- proposals approved under section 50 or 51, or
  - proposals which the proposer has determined under section 53 to implement.
- (2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were approved or determined to be implemented—
- in the case of proposals made under section 41, 42, 43 or 44 (establishment, alteration or discontinuance of schools), in accordance with Schedule 3;
  - in the case of proposals made under section 45 (change of category), in accordance with Schedule 4.
- (3) The proposer may (subject to subsection (6)) determine to delay implementation for a period of up to three years from the date or dates specified in the proposals (as approved or determined) as the date or dates on which they are to be implemented, if it is satisfied—
- that implementation of the proposals on that date or those dates would be unreasonably difficult, or
  - that circumstances have so altered since the proposals were approved under section 50 or 51 or determined under section 53, that implementation of the proposals on that date or those dates would be inappropriate.
- (4) In the case of proposals to discontinue a school made under section 43 or 44, the proposer may (subject to subsection (6)) determine to bring forward implementation by a period of up to 13 weeks from the date or dates specified in

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the proposals (as approved or determined) as the date or dates on which they are to be implemented.

- (5) The proposer may (subject to subsection (6)) determine that subsection (2) does not apply to proposals if it is satisfied—
- (a) that implementation of the proposals would be unreasonably difficult, or
  - (b) that circumstances have so altered since the proposals were approved under section 50 or 51 or determined under section 53, that implementation of the proposals would be inappropriate.
- (6) In the case of proposals which have been approved under section 50 or 51, the proposer may only make a determination under subsection (3), (4) or (5) with the agreement of the Welsh Ministers.
- (7) Before the end of 7 days beginning with the day of the determination, the proposer must notify the following of any determination it makes under subsection (3), (4) or (5)—
- (a) the Welsh Ministers;
  - (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain the school to which the proposals relate;
  - (c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.
- (8) Where, by virtue of subsection (5), subsection (2) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected under section 50(5)(a) or 51(4)(a) or as if the proposer had determined under section 53 not to implement them.

## 56 Interpretation of Chapter 2

- (1) In this Chapter—

“the Code” (“*y Cod*”) means the code on school organisation issued under section 38(1);

“objection period” (“*cyfnod gwrthwynebu*”) has the meaning given by section 49(2);

“proposer” (“*cynigydd*”), in relation to proposals made under section 41, 42, 43, 44 or 45, is the local authority, the governing body or other person who has made the proposals;

“regulated alteration” (“*newid rheoleiddiedig*”) means an alteration described in Schedule 2;

“small school” (“*ysgol fach*”) means 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.

- (2) The Welsh Ministers may by order amend the definition of “small school” in subsection (1) so as to substitute a reference to a different date for the reference to the date for the time being specified.



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VALID FROM 01/10/2013

## CHAPTER 3

### RATIONALISATION OF SCHOOL PLACES

#### *Directions to make proposals for rationalisation of school places*

#### **57 Directions to make proposals to remedy excessive or insufficient provision**

- (1) This section applies where the Welsh Ministers are of the opinion that there is excessive provision, or that there is, or there is likely to be, insufficient provision, for primary or secondary education in maintained schools—
  - (a) in the area of a local authority, or
  - (b) in a part of such an area.
- (2) The Welsh Ministers may—
  - (a) direct the local authority to exercise its powers to make proposals to establish, alter or discontinue schools, and
  - (b) direct the governing body of a foundation or voluntary school maintained by the authority to exercise its powers to make proposals to alter its school.
- (3) A direction under subsection (2) must—
  - (a) require the proposals to be published no later than the date specified in the direction,
  - (b) require the proposals, in giving effect to the direction, to apply any principles specified in it, and
  - (c) where the Welsh Ministers are of the opinion that there is, or there is likely to be, insufficient provision, specify the additional number of pupils to be accommodated.
- (4) A direction under subsection (2)(a) may not require the proposals to relate to a named school.

#### **58 Further provision about proposals made after a direction under section 57(2)**

- (1) Proposals made in accordance with a direction under section 57(2) may not be withdrawn without the consent of the Welsh Ministers.
- (2) The Welsh Ministers may give consent for the purposes of subsection (1) subject to conditions.
- (3) The local authority must reimburse expenditure reasonably incurred by a governing body of a school maintained by it in making proposals in accordance with a direction under section 57(2).
- (4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority must meet the cost of implementing proposals made by a governing body of a school maintained by the authority in

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accordance with a direction under section 57(2) which have been approved or determined to be implemented.

*Proposals by Welsh Ministers to rationalise school places*

**59 Making and publication of proposals by Welsh Ministers**

- (1) This section applies where—
  - (a) the Welsh Ministers have made a direction under section 57(2), and
  - (b) either—
    - (i) proposals have been published in accordance with the direction, or
    - (ii) the time allowed under the direction for the publication of the proposals has expired.
- (2) The Welsh Ministers may make any proposals that could have been made in accordance with the direction.
- (3) The proposals must be published in accordance with the code issued under section 38(1) for the time being in force.
- (4) The Welsh Ministers must send a copy of the proposals—
  - (a) to the local authority for the area, and
  - (b) to the governing body of each school to which the proposals relate.

*Procedure for dealing with proposals under section 59*

**60 Objections**

- (1) Any person may object to proposals published under section 59.
- (2) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

**61 Local inquiry into proposals**

- (1) This section applies where the Welsh Ministers have made proposals under section 59 (other than proposals made by virtue of section 62(1)) which they have not withdrawn.
- (2) If objections have been made in accordance with section 60(2), then, unless all objections so made have been withdrawn in writing within the 28 days referred to in that section, the Welsh Ministers must cause a local inquiry to be held.
- (3) The purpose of the local inquiry is to consider the Welsh Ministers' proposals, any other proposals the Welsh Ministers refer to the inquiry and the objections mentioned in subsection (2).
- (4) Proposals referred to a local inquiry under this section are to be determined under section 62, and sections 50, 51, 53, 54, 70 and 73 do not apply to them.
- (5) Where a local inquiry is required to be held, the Welsh Ministers must refer the proposals listed in subsection (6) to the inquiry if the proposals—
  - (a) have not been determined before the proceedings on the inquiry begin, and



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- (b) appear to the Welsh Ministers to be related to the proposals made under section 59 in respect of which the inquiry is to be held.
- (6) The proposals to be referred are—
- (a) any other proposals published under section 59 in relation to the area of the local authority (and not withdrawn);
  - (b) any proposals made by that authority in the exercise of their powers to make proposals to establish, alter or discontinue schools (and not withdrawn);
  - (c) any proposals made by the governing body of a foundation or voluntary school in the area in the exercise of its powers to make proposals to alter its school (and not withdrawn);
  - (d) any proposals made under section 68 or 71 (and not withdrawn).
- (7) If, before the proceedings on the inquiry begin, the Welsh Ministers form the opinion that any proposals should be implemented, subsection (5) does not require them to refer those proposals to the inquiry unless they form a different opinion before—
- (a) the proceedings on the inquiry are concluded, or
  - (b) (if earlier) the proposals are determined.
- (8) It is not open to the inquiry to question the principles specified in the direction under section 57(2).
- (9) References in this section to the determination of proposals are to—
- (a) a determination whether or not to adopt or approve the proposals under section 50, 51, 62, 70 or 73;
  - (b) a determination whether or not to implement the proposals under section 53;
  - (c) a determination whether or not to approve proposals referred to the Welsh Ministers under section 54.

## **62 Adoption of proposals**

- (1) Where a local inquiry has been held, the Welsh Ministers may, after considering the report of the person appointed to hold the inquiry, do one or more of the following—
- (a) adopt, with or without modifications, or determine not to adopt any of the proposals made by the Welsh Ministers (including proposals made by them referred under section 61(5)) and considered by the inquiry;
  - (b) approve, with or without modifications, or reject any other proposals which were referred to the inquiry under section 61(5);
  - (c) make further proposals under section 59.
- (2) If the Welsh Ministers make further proposals under section 59 in accordance with subsection (1)(c), the requirement in section 61(2) to cause a local inquiry to be held does not apply.
- (3) Where the Welsh Ministers have published proposals under section 59 which are not required to be considered by a local inquiry, they may, after considering any objections made in accordance with section 60(2) (and not withdrawn)—
- (a) adopt the proposals with or without modifications, or
  - (b) determine not to adopt the proposals.

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- (4) The adoption or approval of proposals may be expressed to take effect only if an event specified in the adoption or approval occurs by a date so specified.

### **63 Implementation of proposals**

- (1) Proposals adopted or approved by the Welsh Ministers under section 62 have effect as if they had been approved by the Welsh Ministers under section 50 after having been made—
- (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or
  - (b) in the case of proposals to alter a foundation or voluntary school, by the governing body under its powers to make proposals to alter its school.
- (2) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals adopted or approved under section 62 which have effect as mentioned in subsection (1)(b).

VALID FROM 01/10/2013

## **CHAPTER 4**

### **REGIONAL PROVISION FOR SPECIAL EDUCATIONAL NEEDS**

### **64 Meaning of “regional provision” and “special education functions”**

In this Chapter—

“regional provision” (*“darpariaeth ranbarthol”*) means—

- (a) provision of education for children belonging to the areas of different local authorities, at a school maintained by one of those authorities, or
- (b) provision made by two or more local authorities for goods or services to be supplied by one of the authorities—
  - (i) to the other or others, or
  - (ii) to one or more governing bodies of schools maintained by the other authority or authorities;

“special education functions” (*“swyddogaethau addysg arbennig”*) means functions under Part 4 of the Education Act 1996 (special educational needs).

### **65 Direction to consider making regional provision**

- (1) The Welsh Ministers may direct local authorities to consider whether they (or any of them) would be able to carry out their special education functions, in respect of children with the special educational needs specified in the direction, more efficiently or effectively if regional provision were made.

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- (2) The authorities to whom a direction is given must report their conclusions to the Welsh Ministers no later than the time specified in the direction.
- (3) A direction under this section may be given to local authorities generally or to one or more authorities specified in the direction.

## **66 Directions to make proposals to secure regional provision**

- (1) This section applies where the Welsh Ministers are of the opinion that two or more local authorities would be able to carry out their special education functions, in respect of children falling within a particular description, more effectively or efficiently if regional provision were made in relation to the areas of those authorities.
- (2) The Welsh Ministers may give one or more of the directions specified in subsection (3) for the purpose of securing that regional provision is made in relation to the description of children from the areas specified in the direction.
- (3) The directions are—
  - (a) that a local authority exercise its powers to make proposals to establish, alter or discontinue schools;
  - (b) that the governing body of a foundation or voluntary school exercise its powers to make proposals to alter its school;
  - (c) that two or more local authorities make arrangements under which—
    - (i) provision for education is made by one of the authorities in respect of persons from the area (or areas) of the other authority (or authorities), and
    - (ii) provision is made for determining the payments to be made under the arrangements in respect of the provision of that education;
  - (d) that two or more local authorities make arrangements that provide for one of those authorities to supply to the other (or others) goods or services to be specified in the arrangements on terms (including terms as to payment) to be so specified;
  - (e) that a local authority and the governing bodies of one or more foundation or voluntary schools make arrangements that provide for the authority to supply to the governing bodies goods or services to be specified in the arrangements, on terms (including terms as to payment) to be so specified.
- (4) Where the Welsh Ministers give a direction under subsection (3)(c) and a direction under subsection (3)(a) or (3)(b), the payments to which subsection (3)(c) refers may include an amount in respect of the costs connected with the establishment, alteration or discontinuance of the school in question.
- (5) A direction under subsection (3)(a) or (3)(b)—
  - (a) must require the proposals in question to be published no later than the date specified in the direction, and
  - (b) must require the body making the proposals to send a copy of the published proposals, together with other information (of a kind specified in the direction) in connection with those proposals to the Welsh Ministers.

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### **67 Further provision about proposals made after a direction under section 66**

- (1) Proposals made in accordance with a direction under section 66 may not be withdrawn without the consent of the Welsh Ministers.
- (2) The Welsh Ministers may give consent for the purposes of subsection (1) subject to conditions.
- (3) The local authority must reimburse expenditure reasonably incurred by the governing body of a school maintained by it in making proposals in accordance with a direction under section 66.
- (4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority must meet the cost of implementing proposals made by the governing body of a school maintained by the authority in accordance with a direction under section 66 which have been approved or determined to be implemented.

### **68 Proposals by Welsh Ministers**

- (1) This section applies where—
  - (a) the Welsh Ministers have given a direction under section 66, and
  - (b) either—
    - (i) proposals have been published in accordance with the direction, or
    - (ii) the time allowed under the direction for the publication of the proposals has expired.
- (2) The Welsh Ministers may make any proposals that could have been made in accordance with the direction.
- (3) Before publishing proposals under this section, the Welsh Ministers must consult on the proposals in accordance with the code issued under section 38(1) for the time being in force.
- (4) The proposals must be published in accordance with the code issued under section 38(1) for the time being in force.
- (5) The Welsh Ministers must send a copy of the proposals to—
  - (a) local authorities whose areas are affected by the proposals, and
  - (b) the governing body of each school to which the proposals relate.

### **69 Objections**

- (1) Any person may object to proposals published under section 68.
- (2) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

### **70 Adoption of proposals**

- (1) The Welsh Ministers may, after considering any objections made in accordance with section 69 (and not withdrawn)—
  - (a) adopt the proposals with or without modifications, or
  - (b) determine not to adopt the proposals.

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- (2) The adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified.
- (3) Proposals adopted by the Welsh Ministers have effect as if they had been approved by the Welsh Ministers under section 50 after having been made—
  - (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or
  - (b) in the case of proposals to alter a foundation or voluntary school, by the governing body under its powers to make proposals to alter its school.
- (4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals adopted under subsection (1) which have effect as mentioned in subsection (3)(b).

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## CHAPTER 5

### PROPOSALS FOR RESTRUCTURING SIXTH FORM EDUCATION

#### *Making and determining proposals*

#### **71 Welsh Ministers' powers to restructure sixth form education**

- (1) The Welsh Ministers may make proposals under this section for—
  - (a) the establishment by a local authority of one or more new community or community special schools to provide secondary education suitable to the requirements of sixth formers (and no other secondary education);
  - (b) an alteration described in paragraph 6 of Schedule 2 to one or more maintained schools;
  - (c) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of sixth formers (and no other secondary education).
- (2) A “sixth former” is a person who is above compulsory school age but below the age of 19.

#### **72 Consultation, publication and objections**

- (1) Before publishing proposals made under section 71, the Welsh Ministers must consult on the proposals in accordance with the code issued under section 38(1) for the time being in force.
- (2) The Welsh Ministers must publish proposals made under section 71 in accordance with the code issued under section 38(1) for the time being in force.
- (3) Any person may object to the proposals.

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- (4) Objections must be sent in writing to the Welsh Ministers before the end of 28 days beginning with the day on which the proposals were published.

### **73 Determination by Welsh Ministers**

- (1) After the end of the 28 days referred to in section 72(4), the Welsh Ministers must determine whether to—
- (a) adopt the proposals, with or without modifications, or
  - (b) withdraw the proposals.
- (2) In making a determination under subsection (1), the Welsh Ministers must have regard to any objections made in accordance with section 72(4) and not withdrawn.
- (3) Before adopting proposals subject to modifications, the Welsh Ministers must consult such persons as they consider appropriate.
- (4) The adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified.
- (5) If the event does not occur by the specified date the Welsh Ministers must reconsider their determination under subsection (1).
- (6) The Welsh Ministers may withdraw their proposals at any time before they make a determination under subsection (1).

#### *Implementation of proposals for restructuring sixth form education*

### **74 Form of implementation**

- (1) This section applies to proposals which have been adopted by the Welsh Ministers under section 73.
- (2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were adopted.
- (3) At the request of a specified body, the Welsh Ministers—
- (a) may modify proposals adopted under section 73 after consulting the specified bodies, and
  - (b) where the adoption of proposals was expressed to take effect subject to the occurrence of a specified event, may specify a later date by which that event must occur.
- (4) The Welsh Ministers may determine that subsection (2) does not apply to the proposals if they are satisfied, after consulting the specified bodies—
- (a) that implementation of the proposals would be unreasonably difficult, or
  - (b) that circumstances have so altered since the proposals were adopted that implementation of the proposals would be inappropriate.
- (5) Each of the following is a “specified body” for the purposes of subsections (3) and (4)—
- (a) the governing body of the school to which the proposals relate;



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- (b) in the case of a proposal to establish a new school, the temporary governing body constituted in accordance with arrangements made under section 34 of the Education Act 2002;
- (c) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;
- (d) where the school to which the proposals relate is a community special school each local authority which maintains a statement of special educational needs under Part 4 of the Education Act 1996 in respect of a registered pupil at the school.

## 75 Responsibility for implementation

- (1) Proposals to establish a school must be implemented by the local authority that it is proposed will maintain the school.
- (2) Proposals to make an alteration described in paragraph 6 of Schedule 2 must be implemented—
  - (a) in the case of proposals relating to a community school, by the local authority that maintains the school;
  - (b) in the case of proposals relating to a voluntary aided school—
    - (i) so far as relating to the provision of any relevant premises, by the local authority that maintains the school, and
    - (ii) otherwise, by the local authority that maintains the school and the governing body of the school to the extent (if any) as the proposals provide for each of them to do so;
  - (c) in the case of proposals relating to any other school, by the local authority that maintains the school and the governing body of the school to the extent (if any) as the proposals provide for each of them to do so.
- (3) In subsection (2) “relevant premises” means—
  - (a) playing fields, or
  - (b) buildings which are to form part of the school premises but are not to be school buildings.
- (4) Proposals to discontinue a school must be implemented—
  - (a) in the case of proposals relating to a community or community special school, by the local authority that maintains the school, and
  - (b) in any other case, by the local authority that maintains the school and the governing body of the school.
- (5) If a school changes category from a community school after proposals have been published under section 72 but before they have been implemented, the proposals (to the extent that they have not been implemented) must be implemented by the local authority that maintains the school (despite subsections (2) and (4)).

## 76 Further provision as to implementation

- (1) Where a local authority is required by virtue of section 75 to provide a site for a foundation or voluntary controlled school, paragraph 7 of Schedule 3 (provision of site and buildings for foundation or voluntary controlled school) applies as it applies in the circumstances mentioned in sub-paragraph (1) of that paragraph.

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- (2) Paragraph 8 of Schedule 3 (grants in respect of certain expenditure relating to voluntary aided schools) applies in relation to the obligation under section 75(2)(b)(ii) as it applies in relation to the obligations referred to in paragraph 8(1)(a) of that Schedule.
- (3) Paragraph 9 of Schedule 3 (assistance from local authority in respect of voluntary aided schools) applies in relation to obligations imposed on the governing body of a voluntary aided school under section 75(2)(b)(ii) as it applies in relation to the obligations referred to in that paragraph 9, and paragraph 11 of that Schedule (duty on local authority to transfer interest in premises provided under paragraph 9 or 10) applies accordingly.

### *Supplementary*

## **77 Consequential amendments to inspection reports on sixth form education**

After section 44 of the Education Act 2005 insert—

*“Sixth forms requiring significant improvement in Wales*

### **44A Schools with sixth forms**

- (1) Sections 44B to 44D apply to a maintained school in Wales which—
  - (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and
  - (b) provides full-time education suitable to the requirements of pupils of compulsory school age.
- (2) For the purposes of those sections a school requires significant improvement in relation to its sixth form if—
  - (a) the school is failing to give its pupils over compulsory school age an acceptable standard of education, or
  - (b) in relation to its provision for pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform.

### **44B Inspection reports on schools with sixth forms requiring significant improvement**

- (1) Where a person inspecting a school under Chapter 3 is of the opinion that the school requires significant improvement in relation to its sixth form, the provisions specified in subsection (2) apply (with the necessary modifications) as they apply where the person is of the opinion that special measures are required to be taken in relation to the school.
- (2) Those provisions are section 34(1) to (6) (registered inspectors) or, as the case requires, section 35(1) of that Act (members of the Inspectorate).



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#### **44C Report after area inspection on schools with sixth forms requiring significant improvement**

- (1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 the Chief Inspector forms the opinion that a school requires significant improvement in relation to its sixth form.
- (2) The Chief Inspector must make a report about the school stating that opinion.
- (3) The report is to be treated for the purposes of this Part as if it were a report of an inspection of the school under section 28.

#### **44D Copies of report and action plan**

- (1) This section applies to a report of an inspection under Chapter 3 which—
  - (a) states an opinion that a school requires significant improvement in relation to its sixth form, and
  - (b) is made by a member of the Inspectorate or states that the Chief Inspector agrees with the opinion.
- (2) The person making the report must send a copy (together with a copy of the summary, if there is one)—
  - (a) to the Welsh Ministers, and
  - (b) if the person making the report is a member of the Inspectorate, to the appropriate authority for the school.
- (3) The following provisions apply (with the necessary modifications) in relation to a report to which this paragraph applies—
  - (a) section 38(2) (additional copies),
  - (b) section 38(4) (publication by appropriate authority),
  - (c) section 39 (action plan by appropriate authority), and
  - (d) where the local authority receives a copy of a report about a school the governing body of which have a delegated budget, section 40(2) and (3) (measures by local authority).
- (4) In the application of those provisions—
  - (a) a reference to a report and summary is to be taken as a reference to a report and, if there is one, its summary, and
  - (b) a reference to a summary alone is to be taken, in a case where there is no summary, as a reference to the report.

#### **44E Report on sixth form schools causing concern after area inspection**

- (1) This section applies if in the course of an area inspection under section 83 of the Learning and Skills Act 2000 the Chief Inspector forms the opinion that—
  - (a) special measures are required to be taken in relation to a sixth form school, or

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(b) that a sixth form school requires significant improvement.

- (2) The Chief Inspector must make a report about the school stating that opinion.
- (3) The report is to be treated for the purpose of this Part as if it were a report of an inspection of the school under section 28.
- (4) A “sixth form school” is a maintained school which—
- (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and
  - (b) does not provide full-time education suitable to the requirements of pupils of compulsory school age.

#### **44F Interpretation of sections 44A to 44E**

In sections 44A to 44E—

“the appropriate authority”, in relation to a maintained school, means the school's governing body or, if the school does not have a delegated budget, the local authority;

“the Chief Inspector” means Her Majesty's Chief Inspector of Education and Training in Wales;

“maintained school” means a community, foundation or voluntary school or a community special school;

“member of the Inspectorate” means the Chief Inspector, any of Her Majesty's Inspectors of Education and Training in Wales and any additional inspector appointed under paragraph 2 of Schedule 2.”

VALID FROM 01/10/2013

## **CHAPTER 6**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **78 Federated schools**

Proposals made under this Part to establish a new school may relate to the establishment of the school as a federated school (within the meaning given by section 21(1) of the Education (Wales) Measure 2011).

#### **79 Prohibition on local authorities establishing schools in England**

No proposals may be made for the establishment of a school in England which is proposed to be maintained by a local authority in Wales.

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## **80 Notice by governing body to discontinue foundation or voluntary school**

- (1) The governing body of a foundation or voluntary school may discontinue the school by giving the Welsh Ministers and the local authority that maintains the school two years' notice of its intention to do so.
- (2) The Welsh Ministers' consent is required before giving a notice under this section if expenditure has been incurred on the school premises (otherwise than in connection with repairs)—
  - (a) by the Welsh Ministers, or
  - (b) by any local authority.
- (3) The governing body must consult the Welsh Ministers before giving a notice under this section if discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19.
- (4) If, while a notice under this section is in force, the governing body informs the local authority that it is unable or unwilling to carry on the school until the notice expires, the authority—
  - (a) may conduct the school for all or part of the unexpired period of the notice as if it were a community school, and
  - (b) is entitled to use the school premises free of charge for that purpose.
- (5) While the school is being so conducted—
  - (a) the authority must keep the school premises in good repair, and
  - (b) any interest in the premises which is held for the purposes of the school is to be treated, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations to them, as vested in the authority.
- (6) Despite subsection (5) the governing body may use the premises, or any part of them, when not required for the purposes of the school to the same extent as if it had continued to carry on the school during the unexpired period of the notice.
- (7) A notice under subsection (1) may not be withdrawn without the consent of the local authority.
- (8) If a foundation or voluntary school is discontinued under this section, the duty of the local authority to maintain the school as a foundation or voluntary school ceases.
- (9) Nothing in section 43 applies in relation to the discontinuance of a foundation or voluntary school under this section.
- (10) Subsection (11) applies where—
  - (a) land occupied by the school is held by any trustees for the purposes of the school,
  - (b) the trustees (being entitled to do so) intend to give notice to the governing body of the school to terminate the school's occupation of that land, and
  - (c) the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site.
- (11) The notice given by the trustees to the governing body to terminate the school's occupation of the land must be at least two years; but if, during the first twelve

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months of that notice period, the governing body gives notice under subsection (1), the trustees' notice does not have the effect of terminating the school's occupation of the land until the expiry of the governing body's notice.

- (12) A copy of the trustees' notice must also be given to the Welsh Ministers and the local authority at the time when the notice is given to the governing body.
- (13) Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether subsection (10)(c) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them.
- (14) If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in subsection (10)(c) (including a question as to whether subsection (13) applies in any particular circumstances), it is to be determined by the Welsh Ministers.

## **81 Direction requiring discontinuance of community special school**

- (1) The Welsh Ministers may direct a local authority to discontinue a community special school maintained by it on a specified date, if they consider it expedient to do so in the interests of the health, safety or welfare of pupils at the school.
- (2) A direction under subsection (1) may require the local authority to notify specified persons or a specified class of persons.
- (3) Before giving a direction under subsection (1), the Welsh Ministers must consult—
- (a) the local authority,
  - (b) any other local authority that would in their opinion be affected by the discontinuance of the school, and
  - (c) any other persons the Welsh Ministers consider appropriate.
- (4) On giving a direction under subsection (1), the Welsh Ministers must give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) A local authority to which a direction is given under subsection (1) must discontinue the school in question on the date specified in the direction.
- (6) Nothing in section 44 applies to the discontinuance of a school under this section.

## **82 Transitional exemption orders for purposes of Equality Act 2010**

- (1) This section applies to proposals for a school to cease to be a single-sex school.
- (2) The making of such proposals under section 59, 68 or 71 is to be treated as an application by the responsible body to the Welsh Ministers for a transitional exemption order under the 2010 Act, and the Welsh Ministers may make such an order accordingly.
- (3) In this section—
- “the 2010 Act” (“*Deddf 2010*”) means the Equality Act 2010;
- “make” (“*gwneud*”), in relation to a transitional exemption order, includes vary or revoke;

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“the responsible body” (“*y corff sy’n gyfrifol*”) has the same meaning as in section 85 of the 2010 Act;

“single-sex school” (“*ysgol un rhyw*”) has the same meaning as in paragraph 1 of Schedule 11 to the 2010 Act;

“transitional exemption order” (“*gorchymyn esemptio trosiannol*”) has the same meaning as in paragraph 3 of Schedule 11 to the 2010 Act.

### 83 Interpretation of Part 3

(1) In this Part—

“powers to make proposals to establish, alter or discontinue schools” (“*pwerau i wneud cynigion i sefydlu, newid neu derfynu ysgolion*”) means all or any of the powers of a local authority to make proposals under section 41, 42, 43 or 44;

“powers to make proposals to alter its school” (“*pwerau i wneud cynigion i newid ei ysgol*”), in relation to the governing body of a foundation or voluntary school, means its powers to make proposals under section 42(2).

(2) A reference in this Part to a school's category means one of the categories set out in section 20(1) of the School Standards and Framework Act 1998 (and references to a change of category are to be read accordingly).

(3) A reference in this Part to the discontinuance of a maintained school is a reference to the local authority ceasing to maintain it.

VALID FROM 03/12/2013

## PART 4

### WELSH IN EDUCATION STRATEGIC PLANS

#### 84 Preparation of Welsh in education strategic plans

(1) A Welsh in education strategic plan is a plan which contains—

(a) a local authority's proposals on how it will carry out its education functions to—

(i) improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area;

(ii) improve the standards of Welsh medium education and of the teaching of Welsh in its area;

(b) the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;

(c) a report on the progress made to meet the targets contained in the previous plan or previous revised plan.

(2) A local authority must prepare a Welsh in education strategic plan for its area.

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- (3) A local authority must keep its plan under review, and if necessary, revise it.
- (4) In preparing a Welsh in education strategic plan or revised plan, a local authority must consult—
  - (a) its neighbouring local authorities;
  - (b) the head teacher of each school maintained by it;
  - (c) the governing body of each school maintained by it;
  - (d) each institution within the further education sector in its area;
  - (e) in relation to any foundation or voluntary school in its area—
    - (i) the person who appoints the foundation governors, and
    - (ii) if the school has a religious character, the appropriate religious body;
  - (f) other prescribed persons.
- (5) If a local authority carries out an assessment of the demand for Welsh medium education in accordance with regulations under section 86, it must take the results of that assessment into account when it next prepares or revises its Welsh in education strategic plan.

#### **85 Approval, publication and implementation of Welsh in education strategic plans**

- (1) A local authority which has prepared a Welsh in education strategic plan must submit it to the Welsh Ministers for their approval.
- (2) The Welsh Ministers may—
  - (a) approve the plan as submitted,
  - (b) approve the plan with modifications, or
  - (c) reject the plan and prepare another plan which is to be treated as the authority's approved plan.
- (3) If a local authority wishes to amend its plan, it must submit a revised plan to the Welsh Ministers.
- (4) The Welsh Ministers may approve the revised plan, with or without modifications.
- (5) The Welsh Ministers must consult a local authority before—
  - (a) they modify its plan under subsection (2)(b),
  - (b) they prepare another plan to replace the authority's plan under subsection (2)(c), or
  - (c) they modify its revised plan under subsection (4).
- (6) A local authority must publish its approved Welsh in education strategic plan (or revised plan).
- (7) A local authority must take all reasonable steps to implement its approved Welsh in education strategic plan (or revised plan).

#### **86 Assessing demand for Welsh medium education**

- (1) The Welsh Ministers may require a local authority, in accordance with regulations, to carry out an assessment of the demand among parents in its area for Welsh medium education for their children.



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- (2) Regulations under subsection (1) may (among other things) make provision about when and how to make an assessment.

### **87 Regulations and guidance**

- (1) The Welsh Ministers may make regulations about Welsh in education strategic plans.
- (2) The regulations may make further provision about the following matters (among other things)—
- (a) the form and content of a plan;
  - (b) the timing and duration of a plan;
  - (c) keeping a plan under review and its revision;
  - (d) consultation during the preparation and revision of a plan;
  - (e) the submission of a plan for approval;
  - (f) when and how to publish a plan.
- (3) The regulations may make provision enabling the preparation of a joint plan by two or more local authorities, and any such regulations may modify any provision of this Part in its application to joint plans.
- (4) A local authority must, in the exercise of its functions under this Part, have regard to any guidance issued by the Welsh Ministers.

VALID FROM 01/04/2013

## **PART 5**

### **MISCELLANEOUS SCHOOLS FUNCTIONS**

#### *Free breakfasts in primary schools*

### **88 Duty to provide free breakfasts for pupils in primary schools**

- (1) A local authority must provide breakfasts on each school day for pupils at a primary school maintained by the authority, if—
- (a) the governing body of the school has asked the authority in writing for breakfasts to be provided, and
  - (b) 90 days have passed, beginning with the day following the day on which the request was received.
- (2) The duty in subsection (1) does not apply (or ceases to apply) in relation to a request from a governing body if either of the following paragraphs applies—
- (a) the governing body has asked the authority in writing to stop providing breakfasts;
  - (b) it would be unreasonable to provide the breakfasts and the local authority has notified the governing body in writing that as a result—
    - (i) it is not going to provide breakfasts, or
    - (ii) it is going to stop providing breakfasts.



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- (3) If the duty under subsection (1) applies, the local authority must provide breakfast for each pupil who asks the authority for it; for this purpose, the request may be made by or on behalf of the pupil.
- (4) Breakfasts provided by a local authority under this section—
  - (a) may take any form the authority thinks fit, subject to any regulations made under section 4 of the Healthy Eating in Schools (Wales) Measure 2009 (requirements for food and drink provided on school premises);
  - (b) must be provided free of charge;
  - (c) must be available on the school's premises;
  - (d) must be available before the start of each school day, except in the case of a community special school where breakfasts may be made available before or at the start of each school day.
- (5) In exercising its functions, a local authority or a governing body of a primary school maintained by a local authority must have regard to any guidance given by the Welsh Ministers about providing breakfasts for pupils.

## 89 Transitional provision

- (1) Where a local authority that maintains a primary school, or its governing body, is already providing breakfast for pupils of the school at the time section 88 comes into force, that section applies in relation to the school as if—
  - (a) a request had been made under that section for provision of breakfasts by the governing body,
  - (b) 90 days have passed, beginning with the day following the day on which the request was received, and
  - (c) each pupil for whom breakfast is already being provided has made a request to the authority.
- (2) Subsection (3) applies where, before the coming into force of section 88, a request in writing for the provision of breakfasts for pupils has been made by the governing body of the primary school to the local authority that maintains the school, but neither the local authority nor the governing body has been providing breakfast for pupils of the school.
- (3) The request made before the coming into force of section 88 has effect as a request under that section made on the day that the section came into force.

## 90 Interpretation of sections 88 and 89

In sections 88 and 89—

“primary school” (“*ysgol gynradd*”) means a school that provides primary education (whether or not it also provides other kinds of education);

“provide” (“*darparu*”) includes arranging provision;

“pupil” (“*disgybl*”) means a child receiving primary education at the school (whether or not the child is a registered pupil).

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VALID FROM 04/05/2013

*Power to charge for meals*

**91 Amendment to power to charge for school meals etc**

- (1) Part 9 of the Education Act 1996 (ancillary functions) is amended as set out in subsections (2) and (3).
- (2) In section 512ZA (power to charge for meals etc)—
  - (a) in subsection (1A), omit “in England”;
  - (b) omit subsection (2).
- (3) In section 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc)—
  - (a) in subsection (3A), omit “in England”;
  - (b) omit subsection (4).

*School-based counselling*

**92 Independent counselling services for school pupils and other children**

- (1) A local authority must secure reasonable provision for a service providing counselling in respect of health, emotional and social needs (an “independent counselling service”) for—
  - (a) registered pupils receiving secondary education at—
    - (i) schools maintained by the authority, and
    - (ii) other schools in its area;
  - (b) other persons belonging to the authority's area who have attained the age of 11 but not the age of 19;
  - (c) registered pupils undertaking their final academic year of primary education at—
    - (i) schools maintained by the authority, and
    - (ii) other schools in its area;
  - (d) such other persons receiving primary education as the Welsh Ministers may specify in regulations.
- (2) In securing provision of an independent counselling service under this section, a local authority must have regard—
  - (a) to the principle that the service is to be independent of—
    - (i) the governing body or other proprietor of a school at which a person to whom the service is provided is receiving education, and
    - (ii) the management of a school at which a person to whom the service is provided is receiving education;
  - (b) to guidance given by the Welsh Ministers.

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- (3) A local authority must secure that an independent counselling service is provided on the site of each school maintained by the authority that provides secondary education (whether or not it also provides other kinds of education).
- (4) A local authority may secure the provision of an independent counselling service at other locations.
- (5) The Welsh Ministers may by regulations require the provision of an independent counselling service at other locations.

### **93 Information about independent counselling services**

- (1) A local authority must comply with a direction given by the Welsh Ministers to the authority—
  - (a) to compile information about the independent counselling service it secures under section 92;
  - (b) to provide information about that service to the Welsh Ministers.
- (2) A direction under subsection (1) may include instructions to compile or provide information in a way, and at a time, specified in the direction.
- (3) A direction under subsection (1) may not require a local authority—
  - (a) to provide information about an identified individual;
  - (b) to provide information in a way that, either by itself or in combination with any other information, identifies any individual to whom it relates or enables that individual to be identified.
- (4) If the person providing an independent counselling service is not the local authority—
  - (a) the local authority must give the person providing the service a copy of any direction given to the authority under subsection (1), and
  - (b) the person providing the service must compile the information necessary for compliance with the direction, and provide it to the local authority, in a way that does not identify the individuals to whom it relates, or enable them to be identified (either by itself or in combination with other information).
- (5) A direction under this section—
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

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VALID FROM 04/05/2013

### *Parents' meetings*

#### **94 Duty of governing body of maintained schools to hold meetings following petition by parents**

- (1) The governing body of a maintained school must hold a meeting (“the meeting”) if it receives a petition from parents of registered pupils at the school requesting a meeting and it is satisfied that each of the following four conditions is satisfied.
- (2) The first condition is that the petition contains the signatures of the required minimum number of parents of registered pupils at the school.
- (3) The required minimum number of parents is the lower of the following—
  - (a) the parents of 10% of registered pupils, or
  - (b) the parents of 30 registered pupils.
- (4) For the purpose of subsection (3), the number of registered pupils is to be calculated by reference to the number of registered pupils on the day the petition is received.
- (5) The second condition is that the meeting requested is for the purpose of discussing a matter relating to the school.
- (6) The third condition is that, should a meeting be held, there would be no more than three meetings held under this section during the school year in which the petition is received.
- (7) The fourth condition is that there are enough school days left in the school year for the requirement in subsection (8) to be complied with.
- (8) The meeting must be held before the end of a 25 day period.
- (9) For the purpose of subsection (8), the 25 day period—
  - (a) begins on the first day after the day on which the petition is received (subject to subsection (10)), and
  - (b) does not include any day which is not a school day.
- (10) If another meeting required to be held under this section as a result of a different petition (“the other meeting”) is held on a day during the 25 day period in subsection (9), but before the day on which the meeting is held, the 25 day period begins on the first day after the day on which the other meeting is held.
- (11) The meeting is to be open to—
  - (a) all parents of registered pupils at the school,
  - (b) the head teacher, and
  - (c) other persons invited by the governing body.
- (12) The governing body must, as soon as it reasonably can after receiving a petition that requires a meeting to be held, notify the parents of all registered pupils at the school in writing of the date of the meeting and the matter to be discussed.
- (13) In exercising its functions under this section, the governing body of a maintained school must have regard to guidance given by the Welsh Ministers.

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**95 Repeal of duty to hold annual parents' meeting**

Section 33 of the Education Act 2002 is repealed.

VALID FROM 20/02/2014

*Code of practice on local authority school relations*

**96 Repeal of provision for code of practice for local authority school relations**

Section 127 of the School Standards and Framework Act 1998 (code of practice for securing effective relationships between local authorities and maintained schools in Wales) is repealed.

**PART 6**

GENERAL

VALID FROM 26/04/2013

**97 Orders and regulations**

- (1) A power of the Welsh Ministers to make an order or regulations under this Act is to be exercised by statutory instrument.
- (2) A power of the Welsh Ministers to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases or classes of case, different areas or different purposes;
  - (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
  - (c) to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.
- (3) A statutory instrument containing regulations made under this Act or an order under section 56(2) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) A statutory instrument containing an order under paragraph 26(1) of Schedule 2 must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

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VALID FROM 26/04/2013

## 98 General interpretation and index of defined expressions

- (1) The provisions of this Act and those of the Education Act 1996 are to be read as if they were all contained in the Education Act 1996.
- (2) But where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of the Education Act 1996.
- (3) In this Act—
  - “appropriate diocesan authority” (“*awdurdod esgobaethol priodol*”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;
  - “appropriate religious body” (“*corff crefyddol priodol*”) means—
    - (a) in the case of a Church in Wales school or a Roman Catholic Church school, or proposed such school, the appropriate diocesan authority, and
    - (b) in the case of other schools or proposed schools, the body representing the religion or religious denomination stated, or that it is intended to be stated, in relation to the school in an order under section 69(3) of the School Standards and Framework Act 1998;
  - “Church in Wales school” (“*un o ysgolion yr Eglwys yng Nghymru*”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;
  - “the Code” (“*y Cod*”) in Chapter 2 of Part 3 means the code on school organisation issued under section 38(1);
  - “foundation body” (“*corff sefydledig*”) has the same meaning as in section 21(4)(a) of the School Standards and Framework Act 1998;
  - “foundation governor” (“*llywodraethwr sefydledig*”), in relation to a foundation school or a voluntary school, means a person appointed as a foundation governor in accordance with regulations under section 19 of the Education Act 2002;
  - “local authority” (“*awdurdod lleol*”) (except in section 54(2)(b)) means a county or county borough council in Wales;
  - “maintained school” (“*ysgol a gynhelir*”) means a school in Wales which is a community, foundation or voluntary school, a community special school or a maintained nursery school;
  - “objection period” (“*cyfnod gwrthwynebu*”) is defined in section 49(2) for the purposes of Chapter 2 of Part 3;
  - “powers to make proposals to alter its school” (“*pwerau i wneud cynigion i newid ei ysgol*”) is defined in section 83 for the purposes of Part 3;
  - “powers to make proposals to establish, alter or discontinue schools” (“*pwerau i wneud cynigion i sefydlu, newid neu derfynu ysgolion*”) is defined in section 83 for the purposes of Part 3;
  - “prescribed” (“*rhagnodedig*”) means prescribed by regulations;
  - “primary school” (“*ysgol gynradd*”) is defined in section 90 for the purposes of sections 88 and 89;

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“proposer” (“*cynigydd*”) is defined in section 56 for the purposes of Chapter 2 of Part 3;

“provide” (“*darparu*”) is defined in section 90 for the purposes of sections 88 and 89;

“pupil” (“*disgybl*”) is defined in section 90 for the purposes of sections 88 and 89;

“regional provision” (“*darpariaeth ranbarthol*”) is defined in section 64 for the purposes of Chapter 4 of Part 3;

“regulated alteration” (“*newid rheoleiddiedig*”) in Chapter 2 of Part 3 means an alteration described in Schedule 2;

“regulations” (“*rheoliadau*”) means regulations made by the Welsh Ministers;

“Roman Catholic Church school” (“*un o ysgolion yr Eglwys Gatholig Rufeinig*”) has the same meaning as in section 142(1) of the School Standards and Framework Act 1998;

“school authority” (“*awdurdod ysgol*”) is defined in section 32 for the purposes of Chapter 3 of Part 2;

“small school” (“*ysgol fach*”) is defined in section 56 for the purposes of Chapter 2 of Part 3;

“special education functions” (“*swyddogaethau addysg arbennig*”) is defined in section 64 for the purposes of Chapter 4 of Part 3.

(4) For references in Part 3 to—

- (a) the discontinuance of a maintained school, see section 83;
- (b) a school's category, see section 83.

(5) A reference in this Act to a school which has a religious character is to a school which is designated as having such a character by an order under section 69(3) of the School Standards and Framework Act 1998.

VALID FROM 04/05/2013

## 99 Minor and consequential amendments

Schedule 5 contains minor and consequential amendments.

### Commencement Information

**II** [S. 99](#) not in force at Royal Assent; [s. 99](#) in force for specified purposes at 4.5.2013, see [s. 100\(3\)](#)

## 100 Commencement

(1) The following provisions come into force on the day after the day on which this Act receives Royal Assent—

- section 1;
- this section;
- section 101.



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- (2) The following provisions come into force on 1 April 2013—
  - sections 88 to 90;
  - sections 92 and 93.
- (3) The following provisions come into force at the end of the period of two months beginning on the day on which this Act receives Royal Assent—
  - Chapter 3 of Part 2; section 91;
  - sections 94 and 95;
  - paragraphs 31, 33, 34(1) and (3), 35 and 36 of Part 3 of Schedule 5 (and section 99 in so far as relating to those paragraphs).
- (4) The remaining provisions of this Act are to come into force on a day appointed by the Welsh Ministers in an order.

#### **101 Short title and inclusion as one of the Education Acts**

- (1) The short title of this Act is the School Standards and Organisation (Wales) Act 2013.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

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VALID FROM 04/05/2013

VALID FROM 20/02/2014

## SCHEDULE 1

(introduced by section 18)

### GOVERNING BODIES CONSISTING OF INTERIM EXECUTIVE MEMBERS

#### *Interpretation of Schedule*

1 (1) In this Schedule—

“the appropriate authority” (“*yr awdurdod priodol*”) means—

- (a) where this Schedule applies by virtue of a notice under section 7, the local authority that gave the notice, and
- (b) where this Schedule applies by virtue of a notice under section 14, the Welsh Ministers;

“existing governors” (“*llywodraethwyr presennol*”), in relation to a school in respect of which a notice under section 7 or 14 has been given, means the governors who hold office immediately before the governing body becomes constituted in accordance with this Schedule;

“the interim period” (“*y cyfnod interim*”), in relation to a school in respect of which a notice under section 7 or 14 has been given, means the period during which the governing body is constituted in accordance with this Schedule;

“a normally constituted governing body” (“*corff llywodraethu a gyfansoddwyd yn normal*”) means a governing body constituted in accordance with regulations made by virtue of section 19 of the Education Act 2002 (governing bodies).

(2) In this Schedule any reference to the discontinuance of a maintained school is a reference to the local authority ceasing to maintain it.

#### *Governing body to consist of members appointed by appropriate authority*

2 (1) The governing body of the school is to consist of members appointed by the appropriate authority, instead of being constituted in accordance with regulations made by virtue of section 19 of the Education Act 2002.

(2) In the following provisions of this Schedule—

- (a) the governing body as constituted in accordance with this Schedule is referred to as “the interim executive board”, and
- (b) the members of the governing body as so constituted are referred to as “interim executive members”.

#### *Effect of notice under section 7 or 14*

3 (1) On the date specified in the notice under section 7 or 14, the existing governors vacate office.

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(2) Sub-paragraph (1) does not prevent the appointment of an existing governor as an interim executive member.

(3) During the interim period, any reference in any provision contained in, or made under, the Education Acts to a governor or foundation governor of a school has effect, in relation to the school, as a reference to an interim executive member.

(4) During the interim period, section 83 of the School Standards and Framework Act 1998 (modification of provisions making governors of foundation or voluntary school ex officio trustees) has effect in relation to the school with the substitution for paragraphs (a) to (c) of a reference to the interim executive members.

#### *Number of interim executive members*

4 (1) The number of interim executive members must not be less than two.

(2) The initial appointment of interim executive members must be made so as to take effect on the date specified in the notice under section 7 or 14.

(3) The appropriate authority may appoint further interim executive members at any time during the interim period.

#### *Terms of appointment of interim executive members*

5 (1) Every appointment of an interim executive member must be made by an instrument in writing setting out the terms of the appointment.

(2) An interim executive member—

(a) holds office in accordance with the terms of the appointment and subject to paragraph 16, and

(b) may at any time be removed from office by the appropriate authority for incapacity or misbehaviour.

(3) The terms of appointment of an interim executive member may provide for the appointment to be terminable by the appropriate authority by notice.

#### *Duty of appropriate authority to inform other persons*

6 (1) The appropriate authority must give a copy of the notice under section 7 or 14 and of every instrument of appointment of an interim executive member—

(a) to every interim executive member,

(b) to every existing governor of the school,

(c) where the local authority is the appropriate authority, to the Welsh Ministers,

(d) where the Welsh Ministers are the appropriate authority, to the local authority, and

(e) in the case of a foundation or voluntary school—

(i) to the person who appoints the foundation governors, and

(ii) if the school has a religious character, to the appropriate religious body.

(2) A failure to comply with sub-paragraph (1) does not invalidate the notice or appointment.

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*Power to specify duration of interim period*

7 The appropriate authority may specify the duration of the interim period in the notice under section 7 or 14.

*Chair*

8 The appropriate authority may nominate one of the interim executive members to be chair of the interim executive board.

*Remuneration and allowances*

9 The appropriate authority may pay to any interim executive member such remuneration and allowances as the appropriate authority may determine, subject to any regulations made under paragraph 13(2).

*Duty of interim executive board*

- 10
- (1) During the interim period, the interim executive board must conduct the school so as to secure, so far as is practicable to do so, the provision of a sound basis for future improvement in the conduct of the school.
  - (2) Sub-paragraph (1) does not affect the other duties of the interim executive board as governing body.

*Proceedings of interim executive board*

- 11
- (1) The interim executive board may determine its own procedure.
  - (2) The interim executive board may make such arrangements as it thinks fit for the discharge of its functions by any other person.
  - (3) This paragraph is subject to regulations made under paragraph 13(2).

*Effect on suspension of delegated budget*

- 12
- (1) If immediately before the date specified in a notice under section 7 or 14 the school does not have a delegated budget, the suspension of the governing body's right to a delegated budget is by virtue of this sub-paragraph revoked with effect from that date.
  - (2) If a notice under paragraph 1 of Schedule 15 to the School Standards and Framework Act 1998 (suspension of delegated budget for mismanagement etc) has been given to the governing body before the date specified in a notice under section 7 or 14 but has not yet taken effect, the notice ceases to have effect on that date.
  - (3) During the interim period, the local authority may not exercise the power conferred by section 8 (power to suspend right to delegated budget).
  - (4) Sub-paragraph (1) is to be construed in accordance with section 49(7) of the School Standards and Framework Act 1998.

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*Exclusion of certain statutory provisions*

- 13 (1) Regulations made under section 19(2) or (3) of the Education Act 2002 (governing bodies) do not apply in relation to the interim executive board.
- (2) But regulations made under section 19(3)(f), (g), (i), (j), (k) or (l) of the Education Act 2002 (other than regulations under section 19(3)(l) relating to the constitution of governing bodies) may be applied in relation to the board (with or without modifications) by regulations.
- (3) The instrument of government of the school does not have effect in relation to the interim executive board in so far as it relates to the constitution of the governing body.
- (4) During the interim period—
- (a) the local authority may not exercise any power conferred by section 6 (power to appoint additional governors), and
  - (b) the Welsh Ministers may not exercise any power conferred by section 13 (power to appoint additional governors).

*Closure of school*

- 14 (1) At any time during the interim period, the interim executive board may, if it thinks fit, make a report to the local authority and the Welsh Ministers recommending that the school be discontinued, and stating the reasons for that recommendation.
- (2) The interim executive board may not—
- (a) publish under section 43 proposals to discontinue the school, or
  - (b) serve notice under section 80.
- (3) Sub-paragraph (4) applies if during the interim period—
- (a) the Welsh Ministers give a direction under section 16 or 81 in relation to the school, or
  - (b) the local authority determine to discontinue the school.
- (4) The interim period is to continue until the discontinuance date, even where it would otherwise end before that date.
- (5) In this paragraph “the discontinuance date” means one of the following (as the case may be)—
- (a) the date on which proposals for discontinuing the school are implemented under Part 1 of Schedule 3;
  - (b) the date on which the school is discontinued under section 80;
  - (c) the date specified in the direction under section 16 or 81(1).

*Notice of resumption of government by normally constituted governing body*

- 15 (1) The following sub-paragraph applies if—
- (a) the notice under section 7 or 14 does not specify the duration of the interim period, and
  - (b) paragraph 14(4) does not apply.

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(2) The appropriate authority may give notice to the persons mentioned in sub-paragraph (3) specifying a date on which the governing body are to become a normally constituted governing body.

(3) Those persons are—

- (a) every interim executive member,
- (b) where the local authority is the appropriate authority, the Welsh Ministers,
- (c) where the Welsh Ministers are the appropriate authority, the local authority, and
- (d) in the case of a foundation or voluntary school—
  - (i) the person who appoints the foundation governors, and
  - (ii) if the school has a religious character, the appropriate religious body.

*Time when interim executive members cease to hold office*

16 (1) The interim executive members are to vacate office—

- (a) in a case where sub-paragraph (4) of paragraph 14 applies, on the discontinuance date within the meaning of that paragraph,
- (b) in a case where that sub-paragraph does not apply and the notice under section 7 or 14 specified the duration of the interim period, at the end of the specified period, and
- (c) in any other case, on the date specified under paragraph 15(2).

(2) Sub-paragraph (1) does not prevent the termination of the appointment of an interim executive member at any earlier time under paragraph 5(2)(b) or in accordance with the terms of the appointment.

*Establishment of normally constituted governing body*

17 (1) Where interim executive members are to vacate office on the date referred to in paragraph 16(1)(b) or (c), the local authority must make arrangements providing for the constitution of the governing body on and after that date.

(2) The Welsh Ministers may by regulations make provision with respect to the transition from an interim executive board to a normally constituted governing body, and may in connection with that transition—

- (a) modify any provision made under any of sections 19, 20 and 23 of the Education Act 2002 or by Schedule 1 to that Act,
- (b) apply any such provision with or without modifications, and
- (c) make provision corresponding to or similar to any such provision.

(3) The provision that may be made by virtue of sub-paragraph (2) includes, among other things, provision enabling governors to be elected or appointed, and to exercise functions, before the end of the interim period.

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VALID FROM 01/10/2013
SCHEDULE 2 (Introduced by section 40) REGULATED ALTERATIONS .....
VALID FROM 01/10/2013
SCHEDULE 3 (Introduced by section 55) IMPLEMENTATION OF STATUTORY PROPOSALS ..... ..... .....
VALID FROM 01/10/2013
SCHEDULE 4 (Introduced by section 55) IMPLEMENTATION OF PROPOSALS TO CHANGE CATEGORY OF SCHOOL ..... ..... ..... .....
SCHEDULE 5 (Introduced by section 99) MINOR AND CONSEQUENTIAL AMENDMENTS .....



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