

# **SCHOOL STANDARDS AND ORGANISATION (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Standards**

5. [Chapters 1 and 2](#) of Part 2 of this Act reform the existing law in respect of intervention by local authorities and Welsh Ministers in the conduct of schools maintained by local authorities and intervention by Welsh Ministers in the exercise of education functions by local authorities.
6. Generally, it will be for the local authority to take action in respect of schools causing concern in the first instance, and the Welsh Ministers will normally only take action where the authority has failed to do so, or where it has taken action, it has done so inadequately.

#### ***Section 2 – Grounds for intervention***

7. This section sets out the eight grounds for intervention by a local authority or the Welsh Ministers in a maintained school.
8. The grounds for intervention set out in this section replace the grounds set out in section 15(2)(a) of the School Standards and Framework Act 1998 ('the 1998 Act'), with amendments. In addition grounds 5 and 6 are based on the Welsh Ministers' intervention powers in sections 497 and 496 respectively of the Education Act 1996 (governing body's unreasonable action or failure to comply with a duty). Incorporating provisions of sections 496 and 497 of the Education Act 1996 here means that local authorities as well as the Welsh Ministers can intervene in the conduct of a maintained school on the basis of a governing body's failure to comply with a duty or its unreasonable action. Grounds 5 and 6 also now include reference to a head teacher's failure to comply with a duty or unreasonable action.

#### ***Section 3 – Warning notice***

9. This section provides that if one or more of grounds 1 to 6 set out in section 2 exist the local authority may give a warning notice to the governing body of a school, and specifies what information a warning notice must contain. The warning notice is generally the start of the process of intervention by a local authority in a school and may lead to the powers of intervention being exercised by it.

#### ***Section 4 – Power to intervene***

10. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by a local authority. The powers of intervention are in sections 5 to 9.

11. Where a local authority is satisfied that one or more of grounds 1 to 6 exist, and it has complied with the warning notice procedure set out in section 3, then it may exercise its powers of intervention. However, if a local authority believes that one or more of grounds 1 to 6 exist and also believes there is a related risk to health and safety of any person that calls for urgent action then it does not have to comply with the warning notice procedure before exercising its powers of intervention.
12. In addition, the local authority may exercise its powers of intervention if it is satisfied that grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the local authority does not have to issue a warning notice.

### ***Section 5 – Power to require governing body to secure advice or collaborate***

13. This section provides a new power for a local authority to direct the governing body of a school to make arrangements or enter into a contract for the provision of advisory services or to collaborate in accordance with section 5(2) of the Education (Wales) Measure 2011, so as to improve the school's performance.

### ***Section 6 – power to appoint additional governors***

14. This section replaces the intervention power in section 16 of the 1998 Act, and provides local authorities with a power to appoint additional governors to the governing body of a maintained school.

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

15. This section replaces the intervention power in section 16A of the 1998 Act. It provides local authorities with a power to appoint a specially constituted governing body in place of the existing governors at a school where the local authority has a power to intervene. The specially constituted governing body is known as an interim executive board and it will take over the running of the school. Schedule 1 makes further provision about interim executive boards.

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

16. Under section 49 of the 1998 Act all maintained schools have a right to a delegated budget, which means that their governing bodies are entitled to manage the school's budget. This section replaces the intervention power in section 17 of the 1998 Act, and provides a power for local authorities to suspend a school's right to a delegated budget if a local authority has the power to intervene in the school.

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

17. This section provides a general power for local authorities to issue such directions to the governing body or head teacher of a school it maintains as it thinks appropriate and to take any other steps when one or more of the grounds for intervention exist.
18. This section replaces section 62 of 1998 Act (local authority's power to prevent a breakdown of discipline). It also provides for local authorities to have powers similar to the Welsh Ministers' intervention powers in sections 496 and 497 of the Education Act 1996 (but unlike sections 496 and 497, the power to intervene here is not limited to those cases where grounds 5 or 6 exist).

### ***Section 10 – Warning notice***

19. This section sets out the circumstances in which the Welsh Ministers may give a formal warning notice to a maintained school. A warning notice is generally the start of the

intervention process by the Welsh Ministers in a school, and may lead to the Welsh Ministers' powers of intervention being exercised.

20. The Welsh Ministers may issue a warning notice to the governing body of a school where one or more of grounds 1 to 6 (set out in section 2) exist, but the local authority has not given a warning notice or has done so in terms the Welsh Ministers consider are inadequate. The warning notice will explain to the governing body the reasons why it is being given and the action that the governing body should take.

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

21. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 12 to 17 of the Act.
22. Where the Welsh Ministers are satisfied that one or more of grounds 1 to 6 exist, and they have complied with the warning notice procedure set out in section 10, they may exercise their powers of intervention. However, if the Welsh Ministers are satisfied one or more of grounds 1 to 6 exist, and also believe there is a related risk to health and safety of any person which calls for urgent action, then the Welsh Ministers do not have to comply with the warning notice procedure before exercising their powers of intervention.
23. In addition the Welsh Ministers may exercise their powers of intervention if they are satisfied grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the Welsh Ministers do not have to comply with the warning notice procedure.

### ***Sections 12, 13 and 14 – Powers of Welsh Ministers, etc***

24. These sections provide mirror powers to those of the local authority contained in sections 5, 6 and 7

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

25. This section replaces the intervention power in section 18B of the 1998 Act and provides the Welsh Ministers with the power to issue directions relating to the federation of schools. A federation of schools is the grouping of two or more schools under a single governing body.

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

26. This section replaces the intervention power in section 19 of the 1998 Act and provides the Welsh Ministers with the power to direct the closure of a school if they have the power to intervene on the basis of ground 8 (school requiring special measures). Where the Welsh Ministers direct the closure of a school under this section there is no need for a local authority to make proposals to discontinue the school under Part 3.

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

27. This section provides a mirror power to that of the local authority in section 9 (general power to give directions and take steps).

### ***Sections 18, 19 and 20 and Schedule 1 – Supplementary***

28. **Section 18** introduces Schedule 1 which makes further provision in relation to interim executive boards (constituted following a direction under section 7 or 14). It deals with the transition from a normally constituted body to one consisting of interim executive members, and also the transition from a governing body consisting of interim executive members back to a normally constituted governing body. During the period in which the interim executive members are in post they must discharge the functions of the

normally constituted governing body members. This means they are subject to the same law as normally constituted governing body members, except in relation to their constitution and procedures (paragraph 13 of Schedule 1). However, regulations made under certain paragraphs of section 19(3) of the Education Act 2002 may be applied to the board, for example, in relation to school staffing issues.

29. **Section 19** provides that a head teacher or governing body of a school must comply with a direction given to them by a local authority or the Welsh Ministers under Chapter 1 of Part 2 of this Act. A direction must be in writing and may be enforced by a mandatory order of a court.
30. **Section 20** provides a power for the Welsh Ministers to issue guidance to local authorities in relation to the exercise of its functions under this Chapter. Accordingly, a local authority must have regard to such guidance.

### ***Chapter 2 - Intervention in Local Authorities***

31. This Chapter sets out the circumstances in which the Welsh Ministers can intervene in the way a local authority is exercising its education functions (which are those functions set out in Schedule 36A to the Education Act 1996).

#### ***Section 21 – Grounds for intervention***

32. This section sets out the grounds for intervention that must exist for the Welsh Ministers to intervene in a local authority. These grounds replace the grounds for intervention in local authorities set out in sections 496 to 497A of the Education Act 1996 for Wales. If one or more these grounds exist, the Welsh Ministers will be able to begin the process for intervention.
33. Sections 496 to 497A of the Education Act 1996 will now apply only to local authorities in England.

#### ***Section 22 – Warning notice***

34. This section provides that if one or more of the three grounds set out in section 21 exist, the Welsh Ministers may issue a warning notice to the local authority and specifies what information a warning notice must contain. The warning notice must, among other things, explain why the Welsh Ministers consider the grounds for intervention exist and what the local authority must do to deal with them. A warning notice is generally the start of the intervention process by the Welsh Ministers in a local authority, and may lead to the Welsh Ministers' powers of intervention being exercised.

#### ***Section 23 – Power of Welsh Ministers to intervene***

35. This section sets out the circumstances where the powers to intervene in a local authority may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 24 to 28.
36. Where the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist, and they have complied with the warning notice procedure set out in section 22, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of grounds 1 to 3 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, or that the local authority is unlikely to be able to comply or secure compliance with a warning notice, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

***Section 24 – Power to require local authority to obtain advisory services***

37. This section replaces the intervention power in section 63 of the Education Act 2002 and provides a power for the Welsh Ministers to direct the local authority to obtain advisory services from a third party.

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

38. This section provides a power for Welsh Ministers to direct a local authority to use the services of a third party to carry out its functions.

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

39. This section allows the Welsh Ministers to direct that a local authority's functions are carried out by the Welsh Ministers or by a person nominated by the Welsh Ministers.

***Section 27 – Power to direct exercise of other education functions***

40. **Section 27** enables the Welsh Ministers, when issuing directions under section 25 or 26, to include directions that relate to any of the local authority's education functions, and not just those functions to which the powers to intervene relate.

***Section 28 – General power to give directions and take steps***

41. Where the power to intervene exists this section provides a general power to give directions to a local authority and take steps in relation to it. The taking of steps enables Welsh Ministers to do other things they consider might help to deal with the grounds for intervention other than making a direction.

***Section 30 – Duty to co-operate***

42. This section, which requires local authorities and governing bodies to assist with the action required to comply with directions, replaces section 497AA of the Education Act 1996 (power to secure proper performance: duty of authority where directions contemplated) with some amendments.

***Section 31 – Powers of entry and inspection***

43. This section, which sets out rights of access in connection with the carrying out of directions, replaces section 497B of the Education Act 1996 (power to secure proper performance: further provisions) with some amendments.

***Chapter 3 – School Improvement Guidance***

44. This Chapter provides for the Welsh Ministers to issue guidance to head teachers, governing bodies and local authorities about how to exercise their functions so as to improve standards of education.

***Section 32 - Meaning of “school authority”***

45. This section defines the term “school authority” to mean a local authority, governing body or head teacher of a maintained school in Wales.

***Section 33 - Power to issue school improvement guidance***

46. **Section 33** provides a power for the Welsh Ministers to issue guidance to school authorities setting out how they are to improve the standards of education in schools.

***Section 34 - Consultation and National Assembly for Wales procedures***

47. **Section 34** sets out the procedure the Welsh Ministers must follow before issuing school improvement guidance. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the guidance before the National Assembly for Wales.

***Section 35 - Duty to follow school improvement guidance***

48. This section places a duty on school authorities to comply with guidance issued under section 33.
49. This section does allow for school authorities to depart from that guidance in certain circumstances in order to provide for a degree of flexibility and innovation. Where a school authority which is a local authority or a governing body wishes to depart from the guidance it must issue a policy statement detailing its alternative policy for exercising the education functions concerned. It must then follow that alternative policy. If there is a partial departure from the guidance (subsection (2) or (3) and section 36), school authorities will have to adhere to both the policy statement and (in so far as the policy statement does not deal with a matter) the guidance.
50. In addition the duty to follow the school improvement guidance or a policy statement will not apply to any school authority if to do so would be unreasonable.

***Section 37 - Directions***

51. Where the Welsh Minister consider that the alternative course of action set out in a school authority's policy statement is not likely to improve educational standards they may issue a direction to the school authority requiring it to comply with the guidance. A direction must be issued in writing and may be enforced by a mandatory order.