

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3 - School Organisation**

52. **Part 3** reforms and brings together in one place the law relating to school organisation for Wales; requires the publication of a new Code on School Organisation; and, creates a new framework for the determination of proposals which receive objections, including a simplified process for proposals to close schools with fewer than 10 pupils.

#### ***Sections 38 and 39 School Organisation Code etc***

53. **Section 38** creates a requirement for the Welsh Ministers to issue and publish a code (or codes) on school organisation (“the Code”) with which the persons listed at subsection (2) must act in accordance if the Code requires them to do so. The Code may also include guidelines setting out aims, objectives and other matters to which the named persons must have regard.
54. **Section 39** sets out the procedure that the Welsh Ministers must follow before issuing the Code. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the Code before the National Assembly for Wales.

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

55. This section requires that the opening or closing of a maintained school, or the making of a significant alteration (known as a ‘regulated alteration’) be done in accordance with the processes set out in this Part – except where the Welsh Ministers are using their power of intervention to direct that a school be closed under section 16. The regulated alterations are set out in Schedule 2. Subsection (2) of section 40 prohibits the establishment of a new foundation or foundation special school in Wales. Subsection (5) prohibits any alteration to a maintained school that changes its religious character or causes it to acquire or lose a religious character.
56. Similar provision was made in sections 28(11) and 33 of the 1998 Act.

#### ***Sections 41 to 44 and Schedule 2 - Proposals that may be made in respect of schools in Wales***

57. These sections give local authorities the power to make proposals to:
- establish a community, voluntary, maintained nursery, or community special school;
  - discontinue a community, maintained nursery, voluntary, foundation, or community special school;

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- make a regulated alteration to a community, maintained nursery, or community special school;
  - make a regulated alteration to increase or reduce capacity at a voluntary or foundation school that does not have a religious character;
  - make a regulated alteration to open or close a school's sixth form at a voluntary or foundation school, with the consent of the Welsh Ministers.
58. In addition, any person may make proposals to establish a voluntary school, and the governing body of a foundation or voluntary school may make proposals to make a regulated alteration to the school or to discontinue the school.
59. [Schedule 2](#) sets out in detail the regulated alterations that may be made to a school. Amongst other alterations it allows for:
- alterations to the capacity of the school (paragraphs 10 to 14). In working out whether there is an alteration to the capacity of the school, previous alterations are taken into account so that changes to the capacity cannot be done incrementally without the need to make proposals;
  - an increase or decrease in the age range of the school (paragraph 5). An increase in the upper age range of a school does not permit the addition of a school sixth form. Separate provision in the Schedule (at paragraph 6) allows for a sixth form to be added (or removed) from a school;
  - alterations to the language medium of the school (paragraphs 7 and 8). These have been updated from the Education (School Organisation Proposals) (Wales) Regulations 1999 to reflect the introduction of the foundation phase and teaching methodologies in primary schools; these no longer refer to subjects but instead to percentages of time spent teaching pupils.
60. [Paragraph 26](#) of the Schedule provides the Welsh Ministers with a power to add, change or remove a regulated alteration by Order.
61. These provisions are based on sections 28, 29 and 31 of the 1998 Act and regulations made under these powers.

***Section 45 to 47 - Changing a school's category etc***

62. Schools maintained by local authorities (other than maintained nursery schools) are divided into the different categories set out in section 20 of the 1998 Act. Sections 45 to 47 (based on section 35 of, and Schedule 7 to, the 1998 Act) detail who may make proposals to change a school's category; the grid below summarises this (VA means voluntary aided, VC means voluntary controlled and GB means governing body).

| <i>Category of school</i> | <i>Can become</i>   | <i>Proposer</i> |
|---------------------------|---------------------|-----------------|
| Community school          | VA or VC            | GB              |
| VA school                 | Community or VC     | GB              |
| VC                        | Community or VA     | GB              |
| Foundation                | Community, VA or VC | GB              |

63. No school may change category to become a foundation or foundation special school. No foundation or voluntary school with a religious character may change category to become a community school.

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64. In order to become a VA school a GB must satisfy the Welsh Ministers that they are able to satisfy its funding obligations for a period of at least five years after the change of category takes place (section 46).
65. A change of category does not authorise a change in a school's religious character, or authorise it to establish, join or leave a foundation body (as defined in section 21 of the 1998 Act).
66. If a school is to become a community school, transfer agreements detailed in Schedule 4 must be made.

***Section 48 - Publication and consultation***

67. This section requires that school organisation proposals are consulted upon and published. The Code will set out requirements for consultation and how and when proposals are to be published. Proposers must publish a report on the consultation. The proposers must send copies of the published proposals to the Welsh Ministers and the maintaining local authority. The requirement to consult does not however apply in the case of proposals to discontinue a small school, which is one with fewer than 10 registered pupils on the third Tuesday of the preceding January (defined in section 56).  
This date is the date upon which the Annual Schools Census currently takes place (and the number of pupils at a school on that date will therefore be known).

***Section 49 - Objections***

68. **Section 49** enables any person to object in writing to proposals within 28 days of the publication date (known as "the objection period"), and requires proposers to publish a summary of the objections together with their responses within 28 days of the end of the objection period. But where a local authority is determining its own proposals, it must publish the summary and response within 7 days of its determination under section 53. A local authority will determine its own proposals if they do not require the Welsh Ministers' approval under section 50.

***Sections 50 to 53 – Approval and determination of proposals***

69. Where proposals relate to sixth form education or the relevant local authority has objected to them, the proposals will require approval by the Welsh Ministers. Where there have been objections to proposals (made by a person other than the local authority), but they do not require the approval of the Welsh Ministers, they will require approval by the relevant local authority. The relevant local authority is the local authority that maintains, or will maintain, the school in question.
70. Where proposals require approval, the Welsh Ministers or the local authority may reject the proposals, approve them without modification, or approve them with a modification. A local authority may only modify the planned date of implementation or admission number. Before making a modification, a local authority must gain the consent of the Welsh Ministers and the proposer; the Welsh Ministers must gain the consent of the proposer.
71. The Welsh Ministers or a local authority may treat any other proposals which relate to proposals requiring their approval, as also requiring their approval.
72. Where proposals do not require approval, the proposer will determine whether they should be implemented.

***Section 54 – Referral to the Welsh Ministers***

73. Where a local authority has determined to approve or reject proposals, or determined to implement its own proposals to which there was an objection, the proposals may be referred to the Welsh Ministers for their approval by those bodies set out in subsection (2).

### ***Section 55 and Schedules 3 and 4 - Implementation***

74. **Section 55** requires that proposals which have been approved, or the proposer has determined should be implemented, must be implemented in the form in which they were approved or determined, and in accordance with Schedule 4 for change of category proposals, or in accordance with Schedule 3 for every other type of proposal.
75. **Schedule 3** provides further detail about the implementation of statutory proposals including responsibilities for implementing different types of proposals, and the provision of premises and assistance. Schedule 4 provides further detail about the implementation of change of category proposals, including the transfer of staff and land. This Schedule provides for and sets out the process by which governing bodies and local authorities must implement the proposals to change category and makes similar provision to that found in the Change of Category of Maintained Schools (Wales) Regulations 2001. It sets out, amongst other things, details on how staff and land are to be transferred. The Welsh Ministers are provided with a regulation making power in connection with how changing category affects the government of the school.
76. The proposer may delay determination for up to three years, or determine not to implement proposals at all if it is satisfied that implementation would be unreasonably difficult or that circumstances have so altered that implementation would be inappropriate. The proposer may also determine to bring forward implementation by up to 13 weeks.
77. In making such determinations, the proposer must notify the relevant governing body and local authority (where these are not the proposer). Where proposals have received the approval of the Welsh Ministers or a local authority, the proposer must seek the agreement of the Welsh Ministers before making any determination to delay, abandon, or bring forward implementation.
78. **Section 55** and Schedule 3 replace, with amendments, Schedule 6 to the 1998 Act. Schedule 4 is based on the Change of Category of Maintained Schools Regulations 2001.

### ***Sections 57 to 63 - Rationalisation of Schools Places – powers and procedures***

79. These sections set out powers of the Welsh Ministers to direct local authorities and governing bodies to exercise their powers under Chapter 2 of this Part to make proposals to increase or decrease the number of school places in their area so as to address insufficient or excessive provision - i.e. “rationalise school places”.
80. If the local authority fails to rationalise school places, the Welsh Ministers are provided with powers to make their own proposals to rationalise places (and these provisions also set out the procedure to be followed in the event that such proposals are published).
81. These sections largely re-enact Schedule 7 to the 1998 Act.

### ***Sections 64 to 70 - Regional provision for Special Educational Needs, powers and procedures***

82. These sections set out the powers of the Welsh Ministers to direct local authorities to consider making regional provision for children with special educational needs, or to direct local authorities and governing bodies to make arrangements or proposals for regional provision. Regional provision may involve the provision of education at a school maintained by one local authority for children from other authorities, or the provision of goods and services by one local authority to other authorities or schools.
83. **Section 68** provides for the Welsh Ministers to make their own proposals in respect of regional provision (including the procedure to be followed in the event that such proposals are published).

84. These sections are based on provisions found at sections 191 to 193 of the Education Act 2002.

***Sections 71 to 77 - Proposals for restructuring sixth form education***

85. These sections, based on section 113A of and Schedule 7A to the Learning and Skills Act 2000, provide the Welsh Ministers with the power to make proposals for the establishment of new community, or community special schools, to provide sixth form education only; the addition or removal of sixth form education from any existing maintained schools; the discontinuance of any existing sixth form school; and the procedures to be followed if the Welsh Ministers publish proposals for restructuring sixth forms.
86. **Section 77** makes consequential amendments in respect of inspection reports on sixth form education. Section 113 of, and Schedule 7, to the Learning and Skills Act 2000 provided the Welsh Ministers with powers to publish proposals to discontinue a school that only offered sixth form education or to remove a sixth form from a school. These powers were triggered by an adverse inspection report by Her Majesty's Chief Inspector of Education and Training in Wales. As section 71 provides a free-standing power for the Welsh Ministers to bring forward proposals for the alteration or removal of sixth forms, there is no longer a need for the triggers in Schedule 7 to the Learning and Skills Act 2000. However the requirement to report separately on the adequacy of the education of a school's sixth form as part of a general school or an area inspection is still relevant, and the Education Act 2005 is amended to retain this requirement. These sections are based on provisions in paragraphs 1 to 6 of Schedule 7 to the Learning and Skills Act 2000.

***Section 78 - Federated schools***

87. **Section 78** allows proposals to establish a new school to include the establishment of the school as a federated school. A federated school is a school which is part of a group of schools with a single governing body.

***Section 79 - Prohibition on local authorities establishing schools in England***

88. This section prevents the establishment of a school in England which would be maintained by a local authority in Wales. This section re-enacts section 69 of the Education Act 2005.

***Section 80 - Notice by governing body to discontinue a foundation or voluntary school***

89. This section, which re-enacts and updates section 30 of the 1998 Act, enables the governing body of a foundation or voluntary school, following the procedure required by this section, to discontinue their school by serving two years' notice on the Welsh Ministers and local authority.

***Section 81 - Direction requiring the discontinuance of community special school***

90. This section which re-enacts section 32 of the 1998 Act allows the Welsh Ministers to direct a local authority to discontinue (without the need for proposals under section 44) a community special school if they consider it expedient to do so in the interests of health, safety or welfare of pupils. Before doing so the Welsh Ministers are required to consult specified persons. The Welsh Ministers must also provide notice to the relevant governing body and head teacher.