

Explanatory Memorandum to the School Organisation Code 2018

This Explanatory Memorandum has been prepared by the Education Directorate and is laid before the National Assembly for Wales in conjunction with the above code and in accordance with Standing Order 27.1 and 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the School Organisation Code 2018.

KIRSTY WILLIAMS
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1. Description

The School Organisation Code imposes requirements and provides guidance to those persons who are responsible for proposing and deciding school organisation proposals under the School Standards and Organisation Act 2013 (*'the Act'*).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

Section 38 of the Act requires the Welsh Ministers to issue a code on school organisation (*'the Code'*).

Section 39 of the Act requires that before issuing or revising a Code, the Welsh Ministers must lay a draft copy before the National Assembly for Wales. If, before the end of 40 days, the National Assembly resolves not to approve the draft, the Welsh Ministers must not issue the proposed Code in the form of the draft. If no such resolution is made before the end of the 40 day period, the Welsh Ministers must issue the Code (or revised Code) in the form of the draft. This will be done by an appointed day order.

4. Purpose & intended effect of the legislation

The Code makes provision about the exercise of school organisation functions by the Welsh Ministers, local authorities, governing bodies of maintained schools, and, in connection with proposals to establish voluntary schools, by other persons. Those persons listed must act in accordance with the requirements of the Code, and have regard to relevant guidelines contained within it.

The Code is intended to:

- act as a guide to the legislation;
- provide guidance on good practice;
- set out in detail the mandatory requirements in relation to matters such as school organisation consultation; and
- set out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and by those responsible for determining proposals.

The Code is intended to underpin the school organisation provisions included in the Act and is essential to the operation of those provisions. Taken together, the provisions in the Act and the Code have speeded up the school organisation process ensuring that wherever possible, decisions are taken at

the local level. This in turn has enabled more rapid progress to be made towards the goal of creating an efficient and effective system of 21st Century Schools which maximises educational opportunities for all children and young people and helps to raise levels of educational attainment. Furthermore, the Code in particular is designed to protect and promote the interests of children and young people, especially vulnerable groups such as children with special educational needs. The Code places the interests of children and young people at the heart of the school organisation decision making process and seeks to involve them in that process.

The first edition of the Code came in to force on 1 October 2013 and has applied in respect of all school organisation proposals published by way of statutory notice on or after that day. Once the second edition of the Code comes into force it will supersede the first edition of the Code subject to the following paragraph.

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

The Code was reviewed after over three years of operation. The majority of proposed revisions are intended to provide clarity where that was needed without changing the substance of the Code.

In addition the following substantive revisions aim to strengthen the first edition of the Code:

- The second edition of the Code makes special arrangements for rural schools (defined within the Code), establishing a procedural presumption against the closure of rural schools. This requires proposers to follow a more detailed set of procedures and requirements in formulating a rural school closure proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal.

A presumption against the closure of rural school does not mean that rural schools will never close, but the case for closure must be strong and not taken until all viable alternatives to closure have been explored, including federation.

- The presumption against closure of rural schools applies only to schools designated as rural for this specific purpose. The designation of rural schools is included in the Code along with the list of rural schools which derives from it.
- When considering the likely impact of proposals on quality and standards in Education relevant bodies should have reference to Estyn's revised

Common Inspection Framework.

- When considering the need for school places and the impact of accessibility of schools or proposals relevant bodies should consider the extent to which the proposal would support the targets in the local authority's Welsh in Education Strategic Plan.
- When considering proposals for the change of language medium relevant bodies should consider the extent to which the proposal would support the targets in the local authority's Welsh in Education Strategic Plan.
- A new requirement for consultation documents on statutory proposals to be published on a school day.
- The statutory list of those who must receive copies of consultation documents, consultation reports, statutory notices, objection reports and decision notices has been extended.
- Consultees must be advised of the availability of the consultation document by letter or e-mail and that they can receive a hard copy on request.
- A new requirement for consultation documents to include details of how proposals involving a school closure might affect discretionary transport provision provided by a local authority to learners above compulsory school age.
- A new requirement for consultation documents to include an explanation of how the proposal forms part of the Welsh in Education Strategic Plan (WESP) where any school involved or affected provides teaching through the medium of Welsh.
- A new requirement for consultation documents to include an assessment of the extent to which the proposal would support the targets in the approved WESP and would expand or reduce Welsh language provision.
- The requirement to publish a consultation report "within 13 weeks of the end of the consultation period has been amended to "at least two weeks prior to the publication of a statutory notice.
- A new requirement for the consultation report to contain Estyn's response to the consultation in full and for the proposer to respond to the issues raised by Estyn by means of clarification, amendment to the proposal or rejection of the concerns with supporting reasons.
- A new requirement on proposers to notify the Welsh Ministers once a proposal has been implemented.

5. Consultation

Public consultation on a revised draft Code took place for 14 weeks between 30 June October 2017 and 30 September 2017. Those consulted included local authorities; school governing bodies; Estyn; the Children's Commissioner; diocesan education authorities; the Welsh Local Government Association; and teaching unions.

70 responses were received from a wide representative range of stakeholders. There was broad support for all of the proposed revisions to the first edition of the Code from the majority of respondents, although there were also a small number of suggestions for improvement. Many of these suggestions were subsequently incorporated into the draft of the Code which is being laid.

This included a subsequent extension to the categories of the National-Rural Classification which has been used to designate rural schools and the list of rural schools which derives from it.

A detailed summary of the consultation responses has been published on the Welsh Government's website and can be accessed at <https://beta.gov.wales/school-organisation-code>

6. Regulatory Impact Assessment (RIA)

The Code is not subordinate legislation made by statutory instrument and for that reason an RIA is not required under 4.2 of the Welsh Minister's Regulatory Impact Assessment Code. However, we have given consideration to the implications of the second version of the Code on local authorities and other proposers.

We consider that removing the requirement for proposers to provide each of the statutory consultees with a paper copy of the consultation document will reduce the administrative and financial burden on local authorities and other proposers. Significant work goes in to preparing the consultation document and supporting documents, which can run to many pages. Proposers will instead be required to advise consultees of the availability of the consultation document and that they can receive a hard copy on request

Whilst we consider that the introduction of a procedural presumption against the closure of rural schools will result in additional time for some local in identifying alternatives to closure we do not consider that it will result in significant financial implications.

Although there was no presumption against the closure of any type of school in the first edition of the Code, proposers were required to ensure that the case for closure of any school is robust and in the best interests of educational provision in the area. For any proposed school closure they were required to give special attention to alternatives to closure and to undertake a community impact assessment. The first edition of the Code recognised that the closure of a rural school can have an impact on the community beyond

the issue of education. Prior to publishing a proposal for major changes to schools proposers were required to consult.

Under the procedural presumption against the closure of rural schools identifying alternatives to closure will be a two part process. Proposers will be required to do this before they decide to proceed to consultation will a further opportunity for consultees to identify alternatives during the consultation process which the proposer must consider.

We know that a number of local authorities are already doing much of what is expected under the new Code. The introduction of a procedural presumption against the closure of rural schools is expected to ensure that the procedures proposers undertake to identify alternatives to closure are open and transparent and that subsequent decisions are informed by engagement with key stakeholders. This should result in improved engagement which is expected to lead to higher quality proposal papers and better consultations.

The presumption against the closure of rural schools applies only to those schools designated as rural within the Code. 218 schools are designated as rural schools. These are situated within 15 local authority areas.

We will continue to monitor the impact of the second version of the Code including the presumption against closure of rural schools.