

School organisation proposals

- a guide for constituents

May 2021



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Introduction

Proposals to close or amalgamate schools, or make changes to their governance category or language medium, are known as school organisation proposals, which must be undertaken in accordance with the **School Standards and Organisation (Wales) Act 2013**. The Welsh Government's **School Organisation Code** (second edition, published in 2018) provides statutory guidance on how 'relevant bodies' (the Welsh Ministers, local authorities, governing bodies and other promoters of proposals) under the Act should meet their duties.

The 2013 Act and the Code moved away from the previous system, where any formal registered objection to a proposal resulted in it being referred to the Welsh Ministers for determination, to one where **the proposal can be decided upon by the relevant body (in most cases local authorities) other than stated exceptions** and as long as they comply with a stipulated process.

Overview of the School Organisation Code

The School Organisation Code ('the Code') imposes requirements in accordance with which relevant bodies must act. It includes practical guidance to which relevant bodies must have due regard and sets out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and by those responsible for determining proposals.

The Code also includes guidance on processes which must be followed when consulting and subsequently publishing a proposal, as well as stipulating who can decide the outcome of a proposal.

The Code distinguishes between what relevant bodies **must** do and what they **should** do.

The first edition of the School Organisation Code, issued in 2013, was replaced by a second edition in 2018. Proposals which underwent consultation prior to the second Code taking effect (1 November 2018) are determined under the 2013 Code.

Note: At the time of writing (April 2021), the Welsh Government has **temporarily modified** certain requirements in the Code during the Coronavirus pandemic. These temporary changes mainly relate to what is considered as a 'school day'

during periods of school closures. References to the requirements of the Code in this paper do not take account of these temporary changes and reflect the usual position.

Developing and considering proposals

Most school organisation proposals are brought forward by the local authority. In respect of community schools, the only proposal that the governing body can publish themselves is a change of category; all other proposals such as a closure or significant alteration need to be published by the local authority. Governing bodies of foundation or voluntary schools may make proposals to discontinue, or make a regulated alteration to, their school.

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

The 2013 Act prevents a school from changing its category to become a foundation school or any new foundation school being established.

Chapter 1 of the Code sets out what should be taken into account when relevant bodies develop and consider proposals. There are three main categories of factors to be taken into account.

Firstly in considering quality and standards in education, relevant bodies should place the interests of learners above all others.

Relevant bodies should give paramount importance to the likely impact of the proposals on the quality of outcomes, provision, and leadership and management at the school(s) subject to the proposals and to any others likely to be affected. Relevant bodies should also consider the impact on vulnerable groups, including children with Additional Learning Needs (ALN).

The ability of the school(s) subject to the proposals to deliver the full curriculum should be considered as well as the quality of curriculum delivery. Where a proposal involves transferring provision from one school to another, there should be evidence that this results in equivalent or superior provision. Relevant inspection reports and advice from Estyn should be considered as part of this process.

Secondly, relevant bodies should consider the need for places and the impact on accessibility of schools.

Local authorities must ensure there are sufficient schools providing primary and secondary education for their area. Under section 14 of the Education Act 1996, schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.

Where a school closure, reduction in capacity or age range contraction is proposed, relevant bodies should have regard to the following factors:

- whether alternative school-based provision will have sufficient capacity and provide accommodation of at least equivalent quality, for existing and projected pupil numbers;
- with reference to the nature of the schools subject to proposals, whether the alternative school-based provision is sufficient to meet existing and projected demand for schools of the same language category or designated religious character;
- the nature of journeys to alternative provision and resulting journey times for pupils, including pupils with ALN; in particular whether primary school pupils will have one-way journeys in excess of 45 minutes or for secondary school pupils, one-way journeys of over an hour.

Where a new school, increase in capacity or age range expansion is proposed, relevant bodies should have regard to the following factors:

- that there is evidence of current or future need/demand in the area for additional places, with reference to language category, designated religious character and gender intake;
- whether proposals will improve access for disabled pupils in accordance with requirements under the Equality Act 2010.

Thirdly, relevant bodies should consider the resourcing of education and other financial implications so that funding for education is cost effective.

The following factors should be taken into account in relation to **resourcing**:

- the effect proposals will have on surplus provision in the area (where there are more than 10% surplus places in an area overall, local authorities should review their provision and should consider whether to make proposals for their removal if this will improve the effectiveness and efficiency of provision);

- whether proposals form part of the local authority's 21st Century Schools capital investment programme and contribute to the delivery of sustainable schools and to the better strategic management of the school estate.

The following factors should be taken into account in relation to **finance**:

- the recurrent costs of proposals over a period of at least three years and whether the necessary recurrent resource funding is available;
- additional transport costs as a result of proposals;
- the capital costs of proposals and whether the necessary capital funding is available;
- the scale of any projected net savings;
- whether, without the proposals, the school(s) affected would face budget deficits;
- whether any savings in recurrent costs will be retained in the local authority's local schools' budget;
- whether the proceeds of sales (capital receipts) of redundant sites are to be made available to meet the costs of the proposal or contribute to the costs of future proposals which will promote effective management of school places.

More detail is given on the application of these factors in section 1.3 to 1.5 of the Code.

Other factors

The Code also stipulates some other **general factors** to be considered including the impact on educational attainment among children from economically deprived backgrounds, any equality issues, and whether the school(s) affected are subject to any trusts or charitable interests which might be affected.

Whilst the prime purpose of schools is to provide education, and any case for closing a school should be in the best interests of educational provision in the area, the Code also stipulates several considerations relating to the **impact on the wider community** where a closure is being proposed. This would be, for example, where school buildings are used as community facilities or where there are options for establishing multi-school sites as a means of retaining buildings or clustering, collaboration or federation with other schools. Proposals should therefore be subject to a Community Impact Assessment.

The Code (sections 1.9 – 1.13) stipulates some **further factors** which should be

taken into account in each of the following **specific types of proposal**:

- proposals to add or remove nursery classes;
- proposals to reorganise secondary schools or to add or remove sixth forms;
- proposals to increase provision in voluntary schools or establish a new voluntary school;
- proposals for the change of language medium;
- proposals for the change of school category.

There are additional factors to be taken into account where proposals seek to reorganise Additional Learning Needs (ALN) provision. Relevant bodies should consider how proposals fit with the local authority's plans for promoting inclusion (i.e. providing for a higher proportion of pupils with ALN to attend mainstream settings) wherever appropriate in meeting a child or young person's individual needs, and with its overall strategy for ensuring adequate provision for the full range of ALN. Further factors are set out in paragraph 1.14.

Annex E also lists a number of key background principles and policies such as the United Nations Convention on the Rights of the Child (UNCRC), the Welsh Government's Cymraeg 2050 strategy, and the Learner Travel Operational Guidance.

Presumption against the closure of rural schools

The main reason a second edition of the Code was issued in 2018 was to introduce a **presumption against the closure of rural schools**. This followed the agreement in 2016 between Kirsty Williams who was Minister for Education during the Fifth Senedd and the then First Minister, Carwyn Jones.

The presumption does not mean a rural school will never close. However, the case for closure must be strong and not taken until all viable alternatives to closure have been conscientiously considered, including federation. Further explanation is given in section 1.8, and a list of designated rural schools provided in Annex F, of the Code.

Consulting on proposals

Section 48 of the 2013 Act requires that before school organisation proposals are published, they **must first be subject to consultation**. The requirement to consult does not apply to proposals to discontinue a small school (fewer than 10 pupils).

Case law has established the following **four principles** that consultation should:

- be undertaken when proposals are still at a formative stage;
- include sufficient reasons and information for particular proposals to enable intelligent consideration and response;
- provide adequate time for consideration and response;
- ensure that the product of consultation is conscientiously taken into account when the ultimate decision is taken.

Any informal consultation undertaken with particular stakeholders at an earlier stage must not be seen as a substitute for the formal consultation processes.

Those publishing a proposal by statutory notice must have published a consultation document in hard copy and electronically on their website or that of the local authority. A list of people and organisations who must be sent the consultation document is set out in section 3.4 of the Code.

The consultation document must be issued during the term time of the schools affected and consultees must be given at least **42 days** to respond to the document, with **at least 20 of these being school days**. In the case of all proposals, the consultation document must contain the following information:

- description and benefits;
- details of affected schools;
- quality and standards in education;
- the impact on Welsh-medium provision;
- finance;
- any potential transfers of land and buildings;
- consultation details (how to respond or access further information etc.).

(Further detail on each of the above is given in section 3.4 of the Code.)

The Code also lists specific information which must be included in the consultation document depending on whether the proposal relates to a new school, a closure, special school, sixth form provision, Welsh-medium, faith school, rural school or a change of category.

The proposer must make suitable arrangements to consult with pupils of any affected school and, where possible, children and young people who are likely to attend those schools. As a minimum, this must include consultation with the school councils of the affected schools but should also include consultation with individual learners where appropriate and practical.

There is no requirement to hold consultation meetings although the Code states proposers may find this is beneficial.

Following the consultation, the proposer must publish a **consultation report** which:

- summarises each of the issues raised by consultees;
- responds to these by means of clarification, amendment to the proposal or rejection of the concerns, with supporting reasons;
- sets out Estyn's view (as provided in its consultation response) of the overall merits of the proposal;
- responds to Estyn's view by means of clarification, amendment to the proposal or rejection of the concerns, with supporting reasons.

The consultation report might make recommendations – for example, to the local authority's executive or the governing body – about how to proceed.

The consultation report must be published electronically and hard copies made available on request. Pupils, parents, carers and guardians, staff members of schools affected, and consultees who requested notification must all be advised of the availability of the report. The Code (section 3.6) also lists people and organisations who must be notified of the report.

The consultation period is not the same as the statutory objection period, which follows the later stage of publication of the proposal by statutory notice. Consultees who submit views against the proposal should be advised that their **comments will not be treated as objections** and, that if they wish to object, they will need to do so during the statutory objection period.

Publishing proposals by statutory notice

If, following the consultation exercise and consultation report, the proposer decides to proceed, they must publish the proposal by way of statutory notice. This cannot be done before two weeks have passed since the publication of the consultation report.

Unless proposers have applied for, and been granted, a time extension by the Welsh Ministers, **proposals must be published within 26 weeks of the end of the consultation period**. Otherwise, the proposals will lapse and there must be a new consultation exercise to revive them.

Proposals must be published on a school day. Chapter 4 of the Code sets out where the notice must be published and what it must contain.

Anyone wishing to register a **statutory objection** to the proposal must do so in writing or by e-mail sent to the proposer within **28 days of the date the proposal was published**. This 28 day period is known as the 'objection period' and must include 15 school days (in addition to the day it is published).

Determining proposals

The proposers must publish a summary of the statutory objections and their response to those objections. Where a local authority is able to determine its own proposals, **the objection report must be published within 7 days of determining the proposal**. In all other cases, the report must be published within 28 days of the end of the objection period.

The objection report must be published electronically and hard copies made available on request. Parents, carers and guardians, and staff members of schools affected must all be advised of the availability of the report. The Code (chapter 5) also lists people and organisations who must be notified of the report.

Exceptions to the general rule that local authorities determine proposals

Local authorities are able to determine their own proposals other than certain exceptions. Section 5.2 of the Code states two exceptions where approval is required by the Welsh Ministers:

- If the proposals affect **sixth form education; or**
- If the proposals have been made by a **proposer other than the relevant local authority and an objection has been made by that authority** and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

Proposals are stated as affecting sixth form education if:

- They are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age; or
- 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.

(Section 2.3 of the Code lists ‘the introduction of, or ending of, sixth form provision at a school’ as a ‘regulated alteration’.)

There may be cases where the proposal has been made by someone other than the relevant local authority (for example governing bodies of voluntary or foundation schools). Where the proposal is not covered by one of the exceptions that require the approval of the Welsh Ministers, and has not been met with an objection (which would require the relevant local authority to approve it), **proposers themselves may determine the proposal** within 16 weeks of the end of the objection period.

Determination by local authorities

Where the local authority receives objections during the objection period and they are able to determine the proposal themselves, the Code says:

- The local authority **must not approach the determination of these proposals with a closed mind**. Objections must be conscientiously considered alongside the arguments in respect of the proposals and in the light of the factors to be taken into account when developing and considering proposals.
- The decision on the proposals (the determination) can be taken by the **local authority’s Executive or Cabinet**. However, the local authority may choose to use a form of ‘local decision making Committee’, such as the model set out in Annex D of the Code.
- The local authority must publish an **objection report** summarising the statutory objections and their response to those objections. This must be published within seven days of determining the proposal.

Decisions must be issued in writing and published electronically, setting out clearly the reasons for the decision. Parents, carers and guardians, and staff members of schools affected must all be advised of the decision. The Code lists people and organisations who must be notified of both the objection report and the decision (sections 5.1 and 5.6 respectively).

Referral to the Welsh Ministers

After the initial determination by the local authority, under section 54 of the 2013 Act the following bodies may, within 28 days, refer the proposals to the Welsh Ministers for consideration:

- i.** another local authority affected by the proposals;
- ii.** the appropriate religious body for any school affected; (in the case of a CIW or RC school, this is the appropriate diocesan authority)
- iii.** the governing body of a voluntary or foundation school subject to the proposals;
- iv.** a trust holding property on behalf of a voluntary or foundation school subject to the proposals; and
- v.** a further education institution affected by the proposals.

The bodies making the referral will need to set out why they believe that the decision reached by the local authority is wrong. The Welsh Ministers will decide whether the bodies referred to in i, ii and iv are affected by the proposals and therefore require consideration. Where a proposal requires consideration by the Welsh Ministers, the local authority must provide them, on request, with copies of the statutory objections and any other information considered necessary by the Welsh Ministers.

Where a proposal requires their consideration the **Welsh Ministers may decide** to approve, reject or approve the proposals with modifications. Modifications would normally only include changes to matters such as the timing of implementation or admission numbers and the Welsh Ministers need to consult with the proposer and the relevant governing body and local authority (where they are not the proposer) over any modifications.

Further course of action for dissatisfied parties

Nobody other than those listed above may refer a decision made by a local authority to the Welsh Ministers. There is therefore no **'appeals process'** available to objectors **beyond the objection period** which takes place prior to the proposal being determined. The ultimate option of seeking Judicial Review of the decision

would still be available to a person if they had exhausted all the available options to them, which is essentially only the formal objection period. Complaints may also be made about maladministration to the **Public Services Ombudsman** although this relates to the process followed, not the decision taken.

Proposals made by the Welsh Government

The School Standards and Organisation (Wales) Act 2013 provides the Welsh Ministers with powers to intervene and make school organisation proposals themselves.

The Welsh Ministers may publish a proposal to **remedy excessive or insufficient school places**, where they have previously directed a local authority or governing body to do so. These powers are generally regarded by the Code as powers of last resort and would be used where a local authority has failed to ensure that:

- their area is served by schools which are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education; or
- each child in their area has reasonable access to one of those schools; or
- funding for education is cost effective and resources are used to secure the best possible educational outcomes for children and young people.

As with proposals by governing bodies and local authorities, the Welsh Ministers must publish the proposal in the same way as set out in the Code and there will also be a 28 day objection period during which any person may object. If objections are received, the Welsh Ministers must cause a **local inquiry** to be held to consider the proposal. Any other school organisation proposals which have been published and not determined must be referred to the local inquiry if the Welsh Ministers believe they are related to the original proposal, unless they form the opinion they should be implemented.

The local inquiry will be conducted by a person appointed by the Welsh Ministers who will consider their report and then either adopt (with or without modifications), or decide not to adopt, their own proposal. They may also approve (with or without modifications) or reject any other proposals referred to the local inquiry. Alternatively, the Welsh Ministers may make further proposals, in which case there is no requirement for a further local inquiry to be held and, after considering any objections, they may decide to adopt (with or without modifications) the proposal.

The Welsh Ministers may also publish a proposal to **secure regional provision for children with SEN**, where they have previously directed a local authority or governing body to do so. They also have the power to publish proposals to **restructure sixth form education**. In such cases, the Welsh Ministers must consult on and subsequently publish the proposal in accordance with the processes set out in the Code and, as with other proposals, there will be a 28 day objection period. The Welsh Ministers may, after considering any objections, either adopt (with or without modifications) or decide not to adopt the proposal.