

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
13 May 2013

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**
(Indicative Time 14:30 – 14:35pm)

Negative Resolution Instruments

CLA262 – The Council Tax (Discount Disregards) (Amendment No.2) (Wales) Order 2013

Negative Procedure. Date made 1 May 2013. Date laid 2 May 2013. Coming in to force date 24 May 2013

CLA263 – The Council Tax (Additional Provisions or Discount Disregards) (Amendment No.2) (Wales) Regulations 2013

Negative Procedure. Date made 1 May 2013. Date laid 2 May 2013. Coming in to force date 24 May 2013

- 3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

(Indicative Time 14:35 – 14:40pm)

Negative Resolution Instruments

CLA261 – The Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013 (Pages 1 – 17)

Negative Procedure. Date made 30 April 2013. Date laid 2 May 2013. Coming in to force date 24 May 2013

CLA(4)13–13(p1) – Report

CLA(4)13–13(p2) – Regulations

CLA(4)13–13(p3) – Explanatory Memorandum

4. Other Subordinate Legislation

(Indicative Time 14:40 – 14:45pm)

Negative Resolution

CLA260 – School Organisation Code 2013 (Pages 18 – 94)

Negative Procedure. Date laid: 29 April 2013. Issue date: by Order of Welsh Ministers.

CLA(4)13–13(p4) – CLA260 – School Organisation Code 2013

CLA(4)13–13(p5) – Explanatory Memorandum

5. Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147) (Pages 95 – 105)

(Indicative time 14:45 – 15:00pm)

CLA(4)–13–13(p6) – Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147)

6. Paper to note (Pages 106 – 108)

CLA(4)–13–13(p7) – Letter from Kay Swinburne MEP

CLA(4)–13–13(p8) – Letter to Kay Swinburne MEP from the Chair

7. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) The Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

(Indicative Time 15:00 – 16:30pm)

Consideration of the draft report on the Active Travel (Wales) Bill (Pages 109 – 134)

CLA(4)-13-13(p9) – Draft Report

Agenda Item 3.1

DRAFT SI REPORT

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-13-13

CLA261 – The Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013

Procedure: Negative

Part 6 (sections 58 to 80) of the Local Government (Wales) Measure 2011 (“the Measure”) makes provision about overview and scrutiny committees of local authorities (county and county borough councils) in Wales.

These Regulations, which are made under sections 58 and 172(6) of the Measure, permit two or more local authorities to appoint a joint overview and scrutiny committee to make reports or recommendations to any of the authorities or their executives about matters affecting their areas.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. There are three incorrect cross-references in the Regulations –
 - (a) regulation 13(4) should refer to regulation 12(3), not 12(4);
 - (b) regulation 15(1)(a) should refer to regulation 13, not 12; and
 - (c) regulation 15(1)(b) should refer to regulation 14, not 13.

It appears this was caused by technical problems with the tracking of changes. It is obvious what the correct references should be, therefore they are appropriate for correction when the Regulations are published.

[Standing Order 21.2(vi) – defective drafting.]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Legal Advisers

Constitutional and Legislative Affairs Committee

May 2013

2013 No. 1050 (W. 112)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities (Joint
Overview and Scrutiny
Committees) (Wales) Regulations
2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 6 (sections 58 to 80) of the Local Government (Wales) Measure 2011 (“the Measure”) makes provision about overview and scrutiny committees of local authorities (county and county borough councils) in Wales.

These Regulations, which are made under sections 58 and 172(6) of the Measure, permit two or more local authorities to appoint a joint overview and scrutiny committee to make reports or recommendations to any of the authorities or their executives about matters affecting their areas.

Regulation 1 contains title, commencement and application provisions.

Regulation 2 contains interpretation provisions.

Regulation 3 makes provision for the appointment by two or more local authorities (“the appointing authorities”) of a joint overview and scrutiny committee to exercise functions of making reports and recommendations to any of the authorities or their executives on any matter which affects the whole or part of the area of each of the appointing authorities and is also not an excluded matter. An excluded matter is a matter falling within the remit of a local authority’s crime and disorder committee.

Regulation 4 requires the appointing authorities to enter into an agreement and makes provision about the contents of the agreement.

Regulation 5 makes provision about membership of a joint overview and scrutiny committee.

Regulation 6 makes provision about sub-committees of a joint overview and scrutiny committee.

Regulation 7 makes provision about the chair of a joint overview and scrutiny committee and any sub-committees.

Regulation 8 makes provision about access to meetings and documentation.

Regulation 9 makes provision about termination of membership of a joint overview and scrutiny committee on ceasing to be a member of the authority.

Regulation 10 provides that any member or co-opted member of any of the appointing authorities may not be a member of a joint overview and scrutiny committee for the period of suspension.

Regulation 11 makes provision about co-option of members on to a joint overview and scrutiny committee.

Regulation 12 makes provision about references of matters to a joint overview and scrutiny committee or sub-committee.

Regulation 13 makes provision about responses to reports or recommendations of a joint overview and scrutiny committee and about the publication of reports, recommendations and responses.

Regulation 14 makes provision about the notification to designated persons of reports and recommendations of the joint overview and scrutiny committee.

Regulation 15 makes provision about the exclusion of exempt and confidential information from published reports, recommendations and responses to reports and recommendations.

2013 No. 1050 (W. 112)

**LOCAL GOVERNMENT,
WALES**

**The Local Authorities (Joint
Overview and Scrutiny
Committees) (Wales) Regulations
2013**

Made 30 April 2013

Laid before the National Assembly for Wales

2 May 2013

Coming into force

24 May 2013

The Welsh Ministers, in exercise of the powers conferred upon them by sections 58(1) and 172(6) of the Local Government (Wales) Measure 2011⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013.

(2) These Regulations come into force on 24 May 2013.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations,

“the 2000 Act” (“*Deddf 2000*”) means the Local Government Act 2000⁽²⁾;

“the Measure” (“*y Mesur*”) means the Local Government (Wales) Measure 2011;

(1) 2011 nawm 4.
(2) 2000 c.22.

“appointing authorities” (“*awdurdodau penodi*”) has the meaning in regulation 3;

“designated person” (“*person dynodedig*”) has the same meaning as in section 21(18) of the 2000 Act;

“excluded matter” (“*mater wedi ei eithrio*”) has the same meaning as in section 58(2) of the Measure; and

“joint overview and scrutiny committee” (“*cyd-bwyllgor trosolwg a chraffi*”) means a committee appointed under regulation 3(1).

Appointment and functions of joint overview and scrutiny committee

3.—(1) Two or more local authorities (“the appointing authorities”) may appoint a joint overview and scrutiny committee and arrange for the committee to exercise any functions falling within paragraph (2) as may be determined by those authorities, subject to these Regulations.

(2) The functions referred to in paragraph (1) are functions of making reports or recommendations to any of the appointing authorities and to any of their executives, about any matter—

- (i) which is not an excluded matter; and
- (ii) which affects the whole or part of the area of each of the appointing authorities.

Joint Overview and Scrutiny Committee Arrangements

4.—(1) Where two or more appointing authorities appoint a joint overview and scrutiny committee, they must enter into an agreement which—

- (a) identifies the matters about which reports and recommendations may be made by the joint overview and scrutiny committee;
- (b) specifies the number of members who may be appointed to the joint overview and scrutiny committee, and make provision for the term of office of those members;
- (c) includes provision about quorum of meetings of the joint overview and scrutiny committee and of any sub-committee which the committee appoints;
- (d) makes provision about the duration of the joint overview and scrutiny committee;
- (e) makes provision for the procedure for an appointing authority to withdraw from the joint overview and scrutiny committee; and

- (f) makes provision for the administrative arrangements of the joint overview and scrutiny committee, which must include provision by the appointing authorities' Heads of Democratic Services (or one of them) of an appropriate level of officer support and other resources to the joint overview and scrutiny committee.

(2) In paragraph (1)(f), “Head of Democratic Services” (*“Pennaeth Gwasanaethau Democrataidd”*) has the same meaning as in section 8 of the Measure.

Membership of joint overview and scrutiny committee

5.—(1) The persons eligible for appointment as members of a joint overview and scrutiny committee in accordance with regulation 3(1) are—

- (a) members, other than executive members, of the appointing authorities; and
- (b) persons appointed in accordance with paragraph 8 or 9 of Schedule 1 to the 2000 Act to an overview and scrutiny committee of any of the appointing authorities.

(2) The members of a joint overview and scrutiny committee appointed in accordance with regulation 3(1) must comprise an equal number of persons from each of the appointing authorities.

(3) A joint overview and scrutiny committee is not to be regarded as a body to which section 15 of the Local Government and Housing Act 1989(1) (duty to allocate seats to political groups) applies.

(4) Each appointing authority must ensure that, as far as practicable, the members of a joint overview and scrutiny committee who fall within paragraph (1)(a) reflect the balance of political groups for the time being prevailing among the members of the appointing authority.

Sub-committees of joint overview and scrutiny committees

6.—(1) A joint overview and scrutiny committee may—

- (a) appoint one or more sub-committees from among its members; and
- (b) arrange for the exercise of any of its functions by such a sub-committee.

(2) A sub-committee of a joint overview and scrutiny committee may not exercise any functions other than those conferred on it under paragraph (1)(b).

(1) 1989 c.42.

(3) Any report or recommendations made by a sub-committee of a joint overview and scrutiny committee in accordance with arrangements under paragraph (1)(b) is subject to approval by a resolution of the joint overview and scrutiny committee.

(4) A sub-committee of a joint overview and scrutiny committee is to comprise an equal number of members of each of the appointing authorities.

Proceedings, etc

7.—(1) A joint overview and scrutiny committee must appoint a chair of the committee, and may appoint a deputy chair, from among those members appointed under regulation 3(1).

(2) Arrangements under regulation 3(1) may include provision for duration of term of office of the chair and for rotation of the chair between members of the appointing authorities.

(3) A sub-committee of a joint overview and scrutiny committee must appoint a chair, and may appoint a deputy chair, of the sub-committee from among those members appointed under regulation 6(1).

(4) All members of a joint overview and scrutiny committee appointed in accordance with regulation 3(1) or of a sub-committee of such a committee appointed in accordance with regulation 6(1) may vote on any question that falls to be decided at that meeting.

(5) Where there is an equality of votes at a meeting of a joint overview and scrutiny committee or sub-committee, the chair has a second or casting vote.

Access to meetings and documentation, etc

8. A joint overview and scrutiny committee, or a sub-committee of such a committee, is to be treated as a committee or sub-committee of a principal council for the purposes of Part VA of the Local Government Act 1972⁽¹⁾ (access to meetings and documents of certain authorities, committees and sub-committees).

Termination of membership on ceasing to be a member of the authority

- 9.—(1) This regulation applies to a person who is—
- (a) appointed to be a member of a joint overview and scrutiny committee in accordance with regulation 3(1); and
 - (b) a member of one of the appointing authorities at the time of that appointment.

(1) 1972 c.70.

(2) If a person to whom this regulation applies ceases to be a member of that appointing authority, then that person also immediately ceases to be a member of the joint overview and scrutiny committee.

(3) Paragraph (2) does not apply if a person—

- (a) ceases to be a member of the appointing authority by reason of retirement; and
- (b) is re-elected a member of the authority not later than the day of retirement.

Suspension from membership

10. If a person appointed as a member of a joint overview and scrutiny is suspended from being a member or a co-opted member of one of the appointing authorities, that person may not serve as a member of the joint overview and scrutiny committee for the duration of the suspension.

Co-option

11.—(1) A joint overview and scrutiny committee, or a sub-committee of such a committee, may resolve to co-opt additional members to serve on the committee or sub-committee, subject to paragraphs (2) to (5).

(2) A person may not be appointed as a co-opted member of a joint overview and scrutiny committee, or of a sub-committee of such a committee, unless the appointment is approved by a majority of the members of the committee or sub-committee.

(3) A person co-opted to serve on a joint overview and scrutiny committee, or on a sub-committee of such a committee, is not entitled to vote at any meeting of the committee or sub-committee on any question which falls to be decided at that meeting.

(4) A joint overview and scrutiny committee, or a sub-committee of such a committee, may not co-opt a person who is a member of a local authority, whether that authority is one of the appointing authorities or otherwise.

(5) The membership of a person co-opted to serve on a joint overview and scrutiny committee, or on a sub-committee of such a committee, may be withdrawn by a majority vote at any time by the relevant committee or sub-committee.

Reference of matters to joint overview and scrutiny committee, etc

12.—(1) Arrangements under regulation 3(1) must include provision which enables—

- (a) any member of a joint overview and scrutiny committee to refer to the committee any matter which is relevant to its functions;

- (b) any member of a sub-committee of such a committee to refer to the sub-committee any matter which is relevant to its functions; and
- (c) any member of any of the appointing authorities to refer to a joint overview and scrutiny committee of those authorities any local government matter which is relevant to the functions of the committee.

(2) For the purposes of paragraph (1) provision enables a person to refer a matter to a joint overview and scrutiny committee or to a sub-committee of such a committee if it enables that person to ensure that the matter is included on the agenda for, and discussed at, a meeting of that committee or sub-committee.

(3) Where the committee makes a report or recommendations in relation to a matter referred to it by that member, it must provide the member with a copy of the report or recommendations.

(4) In this regulation, “local government matter” (*“mater llywodraeth leol”*), in relation to a member of an appointing authority, has the same meaning as in section 21A(12) of the 2000 Act.

Duty to respond to joint overview and scrutiny committee, etc

13.—(1) This regulation applies where a joint overview and scrutiny committee makes a report or recommendations to any of the appointing authorities or their executives in accordance with regulation 3(2).

(2) The joint overview and scrutiny committee may publish the report or recommendations.

(3) The joint overview and scrutiny committee may require the appointing authority or authorities, or the executive or executives—

- (a) to consider and respond to the report or recommendations indicating what (if any) steps it proposes, or they propose, to take; and
- (b) if the joint overview and scrutiny committee has published a report or recommendations under paragraph (2), to publish the response.

(4) Where the joint overview and scrutiny committee has provided a copy of the report or recommendations to a member of an appointing authority under regulation 12(4), it must provide the member with a copy of the response.

Notifying designated person of reports or recommendations

14.—(1) This regulation applies where a report is, or recommendations are, on a matter which relates to a designated person in accordance with section 21(2ZA) of the 2000 Act.

(2) The joint overview and scrutiny committee may—

- (a) send a copy of the report or recommendations to the designated person; and
- (b) request the designated person to have regard to the report or recommendations.

Publication etc of reports, recommendations and responses: confidential and exempt information

15.—(1) This regulation applies to—

- (a) the publication under regulation 12 of any document comprising—
 - (i) a report or recommendations of a joint overview and scrutiny committee; or
 - (ii) a response of any of the appointing authorities or their executives to any such report or recommendations;
- (b) the provision of a copy of a report or recommendations to a designated person under regulation 13.

(2) The joint overview and scrutiny committee, the appointing authority or authorities, or the executive or executives, in publishing the document or providing a copy of the document to a designated person—

- (a) must exclude any confidential information; and
- (b) may exclude any relevant exempt information.

(3) If information is excluded under paragraph (2), in publishing the document or providing a copy of the document, the joint overview and scrutiny committee or the appointing authority or authorities or the executive or executives—

- (a) may replace so much of the document as discloses the information with a summary which does not disclose that information, and
- (b) must do so if, in consequence of excluding the information, the document would be misleading or not reasonably comprehensible.

(4) In this regulation—

“confidential information” (“*gwybodaeth gyfrinachol*”) has the meaning given by section 100A(3) of the Local Government Act 1972 (admission to meetings of principal councils);

“exempt information” (“*gwybodaeth esempt*”) has the meaning given by section 100I of the Local Government Act 1972, and, in relation to any report or recommendations of a committee or joint committee which has functions under section 21(2)(f) of the 2000 Act, also includes information

which is exempt information under section 186 of the National Health Service (Wales) Act 2006⁽¹⁾;

“relevant exempt information” (“*gwybodaeth esempt berthnasol*”) means in relation to a—

- (a) report or recommendations of a joint overview and scrutiny committee or sub-committee, exempt information of a description specified in a resolution of the joint overview and scrutiny committee or sub-committee under section 100A(4) of the Local Government Act 1972 which applied to the proceedings, or part of the proceedings, at any meeting of the joint overview and scrutiny committee or sub-committee at which the report was, or recommendations were, considered;
- (b) response of the authority, exempt information of a description specified in such a resolution of the authority which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered;
- (c) response of the executive, exempt information of a description specified in such a resolution of the joint overview and scrutiny committee or sub-committee which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered.

(1) 2006 c.42.

Lesley Griffiths

Minister for Local Government and Government
Business, one of the Welsh Ministers

30 April 2013

Explanatory Memorandum to the Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths

Minister for Local Government and Government Business, one of the Welsh Ministers

30 April 2013

1. Description

- 1.1 The Local Authorities (Joint Overview and Scrutiny Committees) (Wales) Regulations 2013 make provision for two or more local authorities to appoint a joint overview and scrutiny committee.
- 1.2 A joint overview and scrutiny committee may make reports or recommendations to any of the appointing principal councils or their executives.

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

None

3. Legislative background

- 3.1 Chapter 1 of Part 6 of the Local Government (Wales) Measure 2011 enhances the role of non-executive (“backbench”) Local Authority councillors exercising their scrutiny functions. Notable changes are:
 - Enabling councils to delegate functions to councillors;
 - Enabling two or more councils to establish joint overview and scrutiny committees;
 - Introducing on councils a duty to scrutinise any local public services providers which have been designated for the purposes of local authority scrutiny;
 - Enabling overview and scrutiny committees to require information and responses from designated persons outside the council providing services to the public in their area;
 - Providing for local authorities to allocate appointments of chairs of overview and scrutiny committees in proportion to the political balance of the council.
- 3.2 Section 58 permits Welsh Ministers to provide, by regulation, for two or more principal councils to appoint one or more joint overview and scrutiny committees (JOSC), and arrange for the committee or committees to make reports or recommendations to any of the principal councils responsible for setting up the committee or committees, and to the executives of those councils.

4. Purpose & intended effect of the legislation

- 4.1 Current legislation requires each principal council to operate overview and scrutiny committees, with powers to scrutinise and develop policies

in relation to their own authority's functions, including those of the executive, as well as in relation to social, environmental and economic issues affecting their area. However, previous to the Local Government Measure 2011 being passed, there were no legislative provisions which enabled the creation of joint scrutiny committees with other local authorities, even though these were being established in some cases on a voluntary, non-statutory, basis. This did not reflect the increasing development of partnership and joint working across Local Authority boundaries. This meant services or issues which cross county or sectoral boundaries could not be subject to effective scrutiny despite the fact Local Authorities and Public Bodies had been increasingly working together to deliver certain services and address common issues.

- 4.2 Section 58 is an enabling power for Local Authorities. Not all of them will choose, or need, to have a joint committee. Those who do will be permitted by the Regulations to scrutinise matters affecting the whole or part of the area of each of the appointing authorities, for example, the delivery of local authority services where such delivery covers more than one Local Authority area.
- 4.3 Enabling two or more authorities to establish joint overview and scrutiny committees will allow local authorities to utilise formal arrangements to make reports and recommendations on matters affecting the whole or part of the area of each of the appointing authorities, if it suits their circumstances. It increases the options available to local authorities, and aims to strengthen the exercise of scrutiny of public services in local areas and to ensure the process is independent.

Regulatory Impact Assessment (RIA)

- 5.1 Options for achieving the policy objectives in relation to the Regulations, as discussed in Section 4, are:

Option 1 – Do nothing and do not make the Regulations;
Option 2 – Make the Regulations.

Option 1 – Costs and benefits

- 5.2 There would be no financial costs to the Welsh Government or local authorities as a result of failing to make the Regulations. Doing nothing, however, would inhibit the ability of local authorities to exercise jointly an effective scrutiny function in support of collaborative working developed since the Local Government Act 2000 first introduced the scrutiny function.

Option 2 - Costs and Benefits

- 5.3 Local authorities are statutorily obliged to establish a least one overview and scrutiny committee. The power to set up a joint overview and scrutiny committee is an enabling one. There will be no compulsion on local authorities to set one up. The estimated administrative costs for setting up and maintaining a joint overview and scrutiny committee which meets 2-3 times a year is estimated to be £5,000 per annum. A joint overview and scrutiny committee which meets more frequently, up to 6 times a year, could incur administrative costs of up to £18,000. These costs would be shared among the constituent authorities.
- 5.4 In addition, the chair and vice chair of a joint overview and scrutiny committee may be entitled to a payment. Payments to members of a local authority are determined by the Independent Remuneration Panel for Wales. The Panel issued an a Draft Supplementary Report – “Joint Overview and Scrutiny Committees Remuneration” dated 19 March 2013, which set out their considerations of the implications of establishing a joint overview and scrutiny committee for their Remuneration framework. Their preliminary determination is that a chair would be entitled to a payment of £8,375 (£4,368 if the member is already in receipt of a payment) and a vice chair would be entitled to a payment of £4,368 (£2,184 is the member is already in receipt of a payment).
- 5.5 The benefits to local authorities will be to strengthen the exercise of scrutiny of matters such as public services in local areas by extending the scrutiny remit to joint working arrangements, and by ensuring the process is, and is seen to be, independent.

6. Consultation

- 6.1 The Welsh Government issued an electronic public consultation on the draft Regulations. The consultation ran for 12 weeks from 1 October 2012 to 21 December 2012, and requested views on the content of the draft Regulations, and on the draft statutory guidance.
- 6.2 The consultation was available on the Welsh Government web-site, and was sent directly to:

The Association of Council Secretaries and Solicitors;
Chief Scrutiny Officers in the 22 Welsh local authorities; and
The Welsh Local Government Association

- 6.3 A total of 13 responses were received, the majority of which supported the ability of local authorities to establish a joint overview and scrutiny committee.

Competition Assessment

- 7.1 There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.



School Organisation Code



Statutory Code

Statutory Code document no: xxx/2013

Date of issue: April 2013

School Organisation Code

Audience	Local authorities; governing bodies of maintained schools; diocesan authorities; and Estyn.
Overview	<p>The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code.</p> <p>The Code imposes requirements in accordance with which relevant bodies (the Welsh Ministers, local authorities, governing bodies and other promoters) must act. It also 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.</p>
Action required	See above.
Further information	<p>Enquiries about this document should be directed to:</p> <p>David Weale Schools Management and Effectiveness Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6017 e-mail: SchoolsManagementDivision3@wales.gsi.gov.uk</p>
Additional copies	This document can be accessed from the Welsh Government's website at www.wales@gov.uk
Related documents	School Standards and Organisation (Wales) Act 2013; <i>Defining schools according to Welsh medium provision (2007)</i> ; <i>Measuring the capacity of schools in Wales</i> Welsh Government Circular No: 021/2011 (2011).

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Summary

This Code on School Organisation ('the Code') is made under Sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013 ('the 2013 Act').

Section 38 requires the Welsh Ministers to issue a Code that may impose requirements and include guidelines in respect of school organisation on the following (known collectively in this Code as "relevant bodies"):

- the Welsh Ministers;
- local authorities;
- the governing bodies of maintained schools¹; and
- the promoters of proposals to establish voluntary schools.

The Code comes in to force on 1 October 2013 and will apply in respect of all school organisation proposals published by way of statutory notice on or after that day. Proposals published before 1 October 2013 will be determined in accordance with the arrangements made under the Schools Standards and Framework Act 1999 and the Code does not apply to them.

The Code contains the following elements:

1. It imposes requirements in accordance with which relevant bodies (or persons exercising a function for the purpose of the discharge, by a local authority or the governing body of a maintained school, of functions in Part 2 (changes which require proposals)) must act. Failure by a relevant body to comply with the requirements set out in this Code may result in a complaint to the Welsh Ministers or to the Public Services Ombudsman for Wales. Where mandatory requirements are imposed by the Code or by the 2013 Act or another statute or statutory instrument, it is stated that the relevant bodies **must** comply with the particular provision. Where practices are prohibited, it is stated that the relevant bodies **must not** use this practice.
2. It includes statutory guidance to which relevant bodies **must** have 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. Where guidance is given by the Code, it is stated that relevant bodies **should** follow this guidance unless they can demonstrate that they are justified in not doing so.
3. It provides a description of the statutory requirements set out in the 2013 Act.

¹ The categories of maintained schools in Wales are community, voluntary controlled, voluntary aided, foundation and community special.

The Code builds on good practice which already exists amongst local authorities and others, but does not aim to give exhaustive guidance on all aspects of school organisation. Local authorities and others will need to ensure that in carrying out their school organisation functions they act at all times in ways which are reasonable and founded on the interests of learners.

This Code supersedes any guidance to be found in Welsh Government Guidance Circular No: 021/2009 school organisation proposals, National Assembly for Wales Circular 9/99: Organisation of School Places, and National Assembly for Wales Circular No: 48/2004 Guidance Accompanying the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004.

The Code is primarily designed for the use of the relevant bodies but all those with an interest in school organisation matters may also find it useful.

1. Development and consideration of proposals

1.1 Key background principles and policies

The planning and development of effective school organisation proposals is crucial to the Welsh Government's goal of transforming education in Wales and providing better educational outcomes.

Relevant bodies **should** ensure that proposals comply with and support national policies and overarching aims, in particular the Welsh Government's commitment to increase school effectiveness, and narrow inequalities in achievement between advantaged and disadvantaged areas, groups and individuals.

Amongst the overarching principles and policies which **should** be taken into account by relevant bodies in developing school organisation proposals are the following:

- United Nations Convention on the Rights of the Child;
- A living language: a language for living – Welsh Language Strategy 2012-17;
- Welsh- medium Education Strategy;
- One Wales: One planet, a new sustainable development scheme for Wales May 2009 or any successor strategy;
- Child Poverty Strategy for Wales (issued February 2011 Information document number 95/2011), or any successor strategy;
- Faith in Education.

In addition, when developing school organisation proposals, the local plans to which relevant bodies **should** have regard include the following:

- Local plans for economic or housing development;
- Welsh in Education Strategic Plans (made under part 4 of the 2013 Act);
- Children and Young People's Plans (or successor plans);
- 21st Century Schools – Capital Investment Programme and the relevant wave of investment.

Finally, relevant bodies **should** have regard to the following Welsh Government guidance on related matters:

- Learner Travel Operational Guidance - April 2009;
- Measuring the capacity of schools in Wales, Circular No: 021/2011.

1.2 Factors to be taken into account in preparing, publishing, approving or determining school organisation proposals

The following paragraphs set out the factors which **should** be taken into account by relevant bodies when exercising their functions of preparing and publishing school organisation proposals, or approving/determining them. Paragraphs 1.3 to 1.6 are applicable in the case of all proposals.

1.3 Quality and standards in education

Relevant bodies **should** place the interests of learners above all others. With reference to the key questions of the Office of Her Majesty's Chief Inspector of Education and Training in Wales (Estyn), they **should** give paramount importance to the likely impact of the proposals on the quality of:

- outcomes (standards and wellbeing);
- provision (learning experiences, teaching, care support and guidance, and learning environment);and
- leadership and management (leadership, improving quality, partnership working and resource management)

at the school or schools which are the subject of the proposals and at any other school or educational institution which is likely to be affected. Relevant bodies **should** pay particular attention to the impact of the proposals on vulnerable groups, including children with Special Educational Needs (SEN).²

Relevant bodies **should** also consider the ability of the school or schools which are the subject of the proposals to deliver the full curriculum at the foundation phase and each key stage of education. This consideration **should** include the quality of curriculum delivery and the extent to which the structure or size of the school is impacting on this.³

Where proposals involve the transfer of learners to alternative provision there **should** normally be evidence⁴ that the alternative would deliver outcomes and offer provision at least equivalent to that which is currently available to those learners (including learners with SEN). Proposers **should** ensure that the disruption to learners is minimised.

In assessing the impact of proposals on quality and standards in education and how effectively the curriculum is being delivered, relevant bodies **should** consider any relevant advice from Estyn, refer to the most recent Estyn reports or other evidence

² The term Special Educational Needs (SEN) may in future be replaced by Additional Needs (AN).

³ Primary legislation sets out the statutory aims of the school curriculum in Wales at section 99 of the Education Act 2002.

⁴ Advice from Estyn might reasonably be judged as evidence in relation to alternative provision which is brand new.

derived from performance monitoring, and take into consideration any other generally available information available on a school's effectiveness.

1.4 Need for places and the impact on accessibility of schools

Local authorities **must** ensure that there are sufficient schools providing primary and secondary education for their area. Schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education⁵. In order to fulfil these duties, local authorities **must** ensure that they plan thoroughly and engage fully with relevant partners, including the appropriate religious bodies⁶ for schools serving their area which have a designated religious character.

In the light of the above, relevant bodies **should** have regard to the following factors:

Where a school closure⁷, reduction in capacity or age range contraction is proposed:

- whether alternative school-based provision will have sufficient capacity and provide accommodation of at least equivalent quality, for existing and projected pupil numbers;

*In considering proposals relevant bodies **should** have regard to the relevant Building Regulations and associated Building Bulletins, and to the 'Welsh Government's circular on 'Measuring the capacity of schools in Wales' (Circular No: 021/2011). In addition, the Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools **must** have access. Statutory proposals **should** ensure that these standards are met.*

- 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:
 - a. language category as set out in "Defining schools according to Welsh medium provision" Welsh Assembly Government Information document No: 023/2007 (Information document No 023/2007); and
 - b. (if relevant) designated religious character;

*Proposals **should** ensure that the balance of school provision reflects the balance of demand. This means that where school provision is being reduced or removed, alternative school provision of the same nature*

⁵ Section 14 of the Education Act 1996.

⁶ An appropriate religious body is, in the case of a Church in Wales or Roman Catholic school, the appropriate diocesan authority, or in the case of other schools, the body representing the religion and religious denomination stated in relation to the school in an order made under section 69(3) of the School Standards and Framework Act 1998.

⁷ Any reference to 'school closure' included in this document means the discontinuance of a maintained school as set out in section 40 of the 2013 Act

*(language category or, if relevant, religious character), wherever possible, **should** remain available and accessible to pupils in the local area. However in some areas it may not be compatible with the cost effective provision of education to continue to maintain access to schools of the same nature.*

*In all cases, existing pupils at a school where provision is being reduced or removed **must** be able to continue receiving an education that provides at least equivalent standards and opportunities for progression in their current language medium. Specific transition arrangements may be necessary in order to achieve this.*

*Where proposals affect schools where Welsh is a medium of instruction (for subjects other than Welsh) for some or all of the time, local authorities **should** carry out a Welsh Language Impact Assessment.*

- the nature of journeys to alternative provision and resulting journey times for pupils, including SEN pupils; in particular whether primary school pupils will have one-way journeys in excess of 45 minutes or secondary school pupils one way journeys of over an hour;

*Arrangements for accessing the alternative provision **should** encourage sustainable transport; and they **should** address the possible effect of any transport difficulties on pupils' engagement with and attendance at school. Likely walking or cycling routes for safety and accessibility **should** be assessed prior to bringing forward proposals.⁸*

Where a new school, increase in capacity or age range expansion is proposed;

- that there is evidence of current or future need/demand in the area for additional places, with reference to the school or proposed school's language category, designated religious character, and the gender intake (i.e. co-educational/single sex);

*The demand for additional provision of any type in an area **should** be assessed and evidenced (In the case of Welsh medium provision this would include an assessment of the demand for Welsh Medium education conducted in accordance with any regulations made under section 86 of the 2013 Act).*

- whether proposals will improve access for disabled pupils in accordance with requirements under the Equality Act 2010.

⁸ Paragraphs 1.46 – 1.48 of the Welsh Government Learner Travel Operational Guidance - April 2009.

1.5 Resourcing of education and other financial implications

It is important that funding for education is cost effective. Relevant bodies **should** take into account the following factors in relation to the resourcing of education:

- Whether proposals will ensure a fairer and more equitable distribution of funding between mainstream schools within the local authority's area.

*Whilst some variation in the per capita funding provided to schools is to be expected, inefficient patterns of school organisation can result in uneven and unfair funding patterns where some schools receive a disproportionate share of funding at the expense of pupils attending other schools in the area. Proposals **should not** exacerbate such funding differences. Rather, wherever possible, they **should** contribute towards establishing a more equitable pattern of school funding.*

- what effect proposals will have on surplus provision in the area;

Some spare places are necessary to enable schools to cope with fluctuations in numbers of pupils, but excessive numbers of unused places that could be removed mean that resources are tied up unproductively.

*Where there are more than 10% surplus places in an area, local authorities **should** review their provision and **should** make proposals for school reorganisation if this will improve the effectiveness and efficiency of provision. This is especially important where individual schools, have "significant" levels of surplus places. A significant level of surplus provision is defined as 25% or more of a school's capacity (as defined in Circular 21/2011) and at least 30 unfilled places.*

*It **should not** normally be necessary to provide additional places at schools when there are others of the same type with surplus places within reasonable distance. However, proposals to increase the number of places in response to demand for a particular type of provision, e.g. Welsh medium, may still be appropriate; particularly if effective provision of school places is planned for the local authority area.*

- whether proposals form part of the local authority's 21st Century Schools Investment Programme and contributes to the delivery of sustainable schools for the 21st Century and to the better strategic management of the school estate through the removal of maintenance backlogs and school buildings which are in efficient or in poor condition.

Relevant bodies **should** also take into account the following factors in relation to finance:

- the recurrent costs of proposals over a period of at least 3 years and whether the necessary recurrent funding is available;

- additional transport costs incurred as a result of proposals;

*Proposers **should** take into account the requirement on local authorities to provide free transport provision under the Learner Travel (Wales) Measure and **should** seek the advice of Regional Transport Consortia in relation to the impact the proposal might have on associated transport costs and their affordability.*

- the capital costs of proposals and whether the necessary capital funding is available;
- the scale of any projected net savings (taking into account school revenue, transport and capital costs);

*In relation to proposals where substantial upfront capital investment is required (for example to support a substantial remodelling, refurbishment or a new build project), the costs and savings of the proposals **should** be calculated over the lifespan of the relevant building, and compared against the costs and savings associated with the maintenance of the status quo. Where a local authority's business case submission for funding under the 21st Century Schools Programme has been approved by the Welsh Government in line with the HM Treasury 5 case business model, this would provide sufficient evidence of the proposal's cost effectiveness in terms of capital expenditure;*

- whether, without the proposals, the schools affected would face budget deficits;
- whether any savings in recurrent costs will be retained in the local authority's local schools' budget; and
- 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.

*In general, local authorities **should** look to recycle assets from any surplus school buildings and sites in their ownership into the overall improvement of their schools estate rather than allocate those proceeds to projects outside the education portfolio, although these decisions ultimately rest with local authorities.*

1.6 Other general factors

Relevant bodies **should** take into account the following general factors:

- what impact proposals will have on educational attainment among children from economically deprived backgrounds;

- any equality issues, including those identified through equality impact assessments; and
- whether the school or schools involved are subject to any trust or charitable interests which might be affected by the proposals, for example in relation to the use or disposal of land.

*Proposals which affect charities **must** be consistent with charity law or the stated purpose of the charitable trust.⁹ Advice **should** be sought from the Charities Commission or the Welsh Ministers (as the Principal Regulator of governing bodies which are charities) where there is any uncertainty.*

1.7 Specific factors in the consideration of school closures

There is no presumption in favour or against the closure of any type of school. The prime purpose of schools is the provision of education and any case for closure **should** be robust and in the best interests of educational provision in the area. Nevertheless, in some areas, a school may also be the main focal point for community activity, and its closure could have implications beyond the issue of the provision of education. This may be a particular feature in rural areas if school buildings are used as a place to provide services to the local community.

The case prepared by those bringing forward proposals **should** show that the impact of closure on the community has been assessed through the production of a **Community Impact Assessment**, and how any community facilities currently provided by the school could be maintained.

When considering whether a closure is appropriate, special attention **should** be given to the following:

- whether the establishment of multi-site schools might be considered as a means of retaining buildings, or the reasons for not pursuing this option;
- whether alternatives to closure, such as clustering, collaboration or federation with other schools, might be considered (taking account of the scope for use of ICT links between school sites) or the reasons for not pursuing these as an alternative;
- whether the possibilities of making fuller use of the existing buildings as a community or an educational resource could be explored;

(Local authorities **should** consider whether it would be feasible and economical to co-locate local services within the school to offset the costs of maintaining the school);

⁹ All foundation and voluntary school governing bodies are charities under section 23 of the Schools Standards and Framework Act 1998 and community school sites may also be subject to charitable interests.

- the overall effect of a closure on the local community (including the loss of school based facilities which are used by the local community), particularly in rural areas or those receiving funding as part of regeneration activity; and
- how parents' and pupils' engagement with the alternative school and any facilities it may offer could be supported (e.g. how pupils; particularly any less advantaged pupils) will be helped to participate in after school activities).

Although under the 2013 Act the requirement to consult does not apply to proposals to discontinue small schools with fewer than 10 pupils at the preceding January census point ¹⁰ local authorities and governing bodies bringing forward such proposals **must** still take into account the factors set out in this Code.

1.8 Specific factors to be taken into account for proposals to add or remove nursery classes

Relevant bodies **should** take into account the following specific factors:

- the standard of nursery education and the sufficiency of accommodation and facilities offered, both in the classroom and outdoors, and the viability of any school that wishes to add nursery places;
- whether there is a need for additional nursery places in the area;
- the levels of demand for certain types of nursery education e.g. Welsh medium or provision with a religious character;
- the effect of the proposals on other institutions, including private and third sector providers; and
- the extent to which proposals will integrate early years education with childcare services or are consistent with an integrated approach.

1.9 Specific factors to be taken into account for proposals to reorganise secondary schools or to add or remove sixth forms

Relevant bodies **should** take into account the following specific factors:

- whether proposals will lead to an improvement in the educational or training achievements of persons who are above compulsory school age but below the age of 19;
- whether proposals will contribute to an appropriate range of relevant courses and qualifications and high quality, employer informed, vocational learning routes targeted at pupils of all abilities, whilst maintaining GCSE, AS/A level and other established courses, as required under the Learning and Skills (Wales) Measure 2009 for 14-19 year old learners;

¹⁰ Section 56 of the 2013 Act defines a 'small school', for the purposes of deciding whether consultation is required, as a school with fewer than 10 registered pupils on the third Tuesday in January immediately preceding the date on which the proposals are made.

- whether proposals are likely to lead to increased participation in learning by pupils beyond compulsory school age, taking into account transport issues and costs to the learner and others, the affordability of such costs, and the likelihood of learners being willing to travel;
- the extent to which proposals contribute to the 14-19 agenda taking account of the views of local 14-19 networks and learning partnerships;
- the effect of proposals on 11-16 provision in schools;
- how proposals would affect the viability of institutions already providing good-quality post-16 provision, including school sixth forms, Further Education Institutions and private training organisations;
- how proposals might affect the sustainability or enhancement of Welsh medium provision in the local 14-19 network and wider area and promote access to availability of Welsh medium courses in post-16 education;
- the extent to which proposals will provide additional learner benefits compared with the status quo and other tenable options for post-16 organisation; and
- how proposals might affect the discretionary transport provision a local authority may provide to learners¹¹ above compulsory school age.

1.10 Specific factors to be taken into account for proposals to increase provision in voluntary schools or establish a new voluntary school

Relevant bodies **should** take into account whether:

- the local authority has confirmed that it will meet its liability;
- the governing body of a voluntary aided school will be able to meet its financial responsibilities for repairs and capital work; and
- the proposed land tenure arrangements give the school sufficient security of occupation of the site.

Where land tenure arrangements are not settled those determining proposals might indicate that they are minded to approve the proposals subject to satisfactory resolution of those issues. Such a decision could be appropriate where the promoters are unwilling to incur legal expenses to resolve the tenure issue until they know that there is a strong likelihood that the proposals will be approved.

¹¹ Section 6 of the Learner Travel (Wales) Measure 2008 gives a local authority the power to provide discretionary transport where they think fit to facilitate the travel of learners. Paragraphs 2.1 – 2.8 of the Welsh Government Learner Travel Operational Guidance – April 2009 provides further guidance on this provision.

1.11 Specific factors in the consideration of proposals for the change of language medium

Relevant bodies **should** take into account the following specific factor:

- the extent to which existing provision by the local authority of education in the medium of English and/or Welsh exceeds or falls short of demand or projected demand from parents for that type of provision, and the contribution the proposal would make to remedying that situation.

1.12 Specific factors in the consideration of proposals for the change of school category

Relevant bodies **should** take into account the following specific factors:

- all categories of school - community, foundation, voluntary controlled or voluntary aided - are of equal status;
- all permissible proposals to change the category of a school will be considered on their individual merits¹² ; and
- whether, any benefits can be identified.

*Changing category has the potential to cause disruption to the running of the school and/or place added burdens on the governing body and/or add complexity to school reorganisation or admissions. Therefore, there **should** be a presumption against changes where benefits cannot be identified.*

- Whether any trust deed relating to the school allows for the change of category proposed. If there is any doubt, or if a variation in the trust deed is clearly necessary, proposers **should** make early contact with the Charity Commission.

1.13 Additional factors to be taken into account in preparing, publishing, approving or determining proposals for the reorganisation of SEN provision

Policies and principles

The principles and plans set out elsewhere in this Code **should** be taken into account in the consideration of proposals for the reorganisation of maintained special schools and specialist resource bases in mainstream schools.

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 SEN to attend

¹² Schools are not permitted to change their category to foundation and schools with a religious character may not become community schools.

mainstream settings) wherever that is 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 SEN.

Relevant bodies **should** have regard to the factors set out below in relation to proposals affecting special schools and specialist resource bases in mainstream schools.

Standards of provision

In addition to the usual considerations in relation to standards of provision, relevant bodies **should** consider:

- whether proposals will improve standards of accommodation for pupils with SEN, including building accessibility;
- how proposals will address any health, safety and welfare issues;
- how proposals, where appropriate, will support increased inclusion; and
- the impact of proposals on other SEN provision within the immediate and wider local authority area including out of county where appropriate.

Need for places and the impact on accessibility of schools

In addition to the considerations listed in 1.4, relevant bodies **should** consider:

- whether there is a need for a particular type of SEN provision within the area;
- whether there is surplus SEN provision within the area;
- whether SEN provision would be more effective or efficient if regional provision were made; and
- the impact of proposals on the transportation of learners with SEN.

Other factors

Relevant bodies **should** consider:

- how changes to SEN provision in schools are likely to impact on all other services provided in an area for pupils with disabilities and/or SEN.

1.14 Factors to be taken into account in approving/determining school organisation proposals

When approving or determining proposals, relevant bodies:

- **must** consider whether there are any other related proposals;

- **must** ensure that the statutory consultation has been conducted in accordance with this Code (the requirement to consult does not apply to proposals to discontinue a school which is a small school);
- **must** ensure that the proposal has been published in accordance with this Code and the notice contains all the required information;
- **must** consider the consultation document and consultation report;
- **must** consider the objections and the objection report and any responses to the notice supporting the proposals;
- **should** consider, in the case of a proposal to change the category of a school, whether, there are any benefits. If no benefits can be identified, such proposals **should not** be approved; and
- **must not** approve change of category proposals where a variation in the trust deed is necessary but has not yet taken place.

2. Changes which require proposals

Statutory procedures are usually necessary to make significant changes to schools. The procedures are designed to enable changes to be made where they are considered necessary, but in a way which protects the interests of learners and allows interested parties the opportunity to have their say in the process.

2.1 Elements of school reorganisation that require the publication of proposals

Proposals **must** be published for the following elements of school reorganisation:

1. the opening of a maintained school (including a special school);
2. the closing of a maintained school (including a special school); and
3. a change in a school's category so that it becomes a school of another category¹³.

Proposals to change the category of a school

Category of school	Can become	Proposer
Community school*	VA or VC	Governing Body (GB)
Voluntary Aided (VA) school*	Community or VC	GB
Voluntary Controlled (VC) school*	Community or VA	GB
Foundation school*	Community, VA or VC	GB

*Note that it is not possible for VA, VC or foundation schools with a designated religious character to become a community school through a change of category proposal. Similarly community schools cannot become VA or VC schools with a designated religious character. Community schools are not permitted to have a religious character and no alteration may be made to a maintained school that changes its designated religious character or causes it to acquire or lose a designated religious character.

2.2 Regulated alterations

In addition, proposals **must** be published for the following significant alterations (known as “regulated alterations”) to schools:

- the transfer of any school to a new site, except where the new site is within 1.609344 kilometres (one mile) of any of the main entrances of the school on its old site;

¹³ Except to foundation – the 2012 Act prohibits schools from changing their category to foundation.

- changing a school (including a special school) from single-sex to mixed or vice-versa. (A school is treated as admitting pupils of one sex only if the admission of pupils of the other sex is limited to pupils over compulsory school age, and does not exceed 25% of the age group in question);
- a change in the age range of a school (including a special school) by a year or more (not including the introduction or discontinuation of part-time or full-time Further Education or changes to provision for pupils over compulsory school age who are repeating a course of education completed before they reached the end of compulsory school age);
- the introduction of, or ending of, sixth form provision at a school;
- the alteration of the medium of instruction of a class of pupils in an age group or groups (including nursery pupils) at a primary school (or primary education in relation to middle or special schools) which falls within the description in column 1 of the table below so that it falls within the description in the corresponding entry in column 2.

Column 1	Column 2
At least 20% but no more than 80% of the teaching is conducted through the medium of English.	An increase or decrease of more than 20% in the teaching which is conducted through the medium of Welsh.
At least 20% but no more than 80% of the teaching is conducted through the medium of Welsh.	An increase or decrease of more than 20% in the teaching which is conducted through the medium of English.
More than 80% of the teaching is conducted through the medium of English, and some teaching is conducted through the medium of Welsh.	An increase of more than 10% in the teaching which is conducted through the medium of Welsh.
More than 80% of the teaching is conducted through the medium of Welsh, and some teaching is conducted through the medium of English.	An increase of more than 10% in the teaching which is conducted through the medium of English.
No teaching is conducted through the medium of Welsh.	More than 10% of the teaching is conducted through the medium of Welsh.
No teaching is conducted through the medium of English.	More than 10% of the teaching is conducted through the medium of English.
Some teaching is conducted through the medium of English.	No teaching is conducted through the medium of English.
Some teaching is conducted through the medium of Welsh.	No teaching is conducted through the medium of Welsh.

- the alteration of the teaching of pupils in a year group at a secondary school (or secondary education in relation to middle or special schools) which falls within the description in column 1 of the table below so that it falls within the description in the corresponding entry in column 2.

Column 1	Column 2
Five or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils.	A decrease by four or more in the number of the relevant subjects taught (wholly or mainly) through the medium of Welsh to any pupils.
Five or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils.	A decrease by four or more in the number of the relevant subjects taught (wholly or mainly) through the medium of English to any pupils.
Every relevant subject is taught (wholly or mainly) through the medium of Welsh to all pupils.	Three or more relevant subjects are taught (wholly or mainly) through the medium of English to any pupils.
Every relevant subject is taught (wholly or mainly) through the medium of English to all pupils.	Three or more relevant subjects are taught (wholly or mainly) through the medium of Welsh to any pupils.
One or more relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils.	No relevant subject is taught (wholly or mainly) through the medium of Welsh to any pupils.
One or more relevant subject is taught (wholly or mainly) through the medium of English to any pupils.	No relevant subject is taught (wholly or mainly) through the medium of English to any pupils.

(Relevant subjects are defined as any subjects apart from English and Welsh which are taught at a school).

- an enlargement of the premises of a school (excluding nursery and special schools), which would increase the capacity of the school by at least 25% or 200 pupils as compared with the school's capacity on the appropriate date. In determining an increase in capacity all enlargements that have taken place since the appropriate date are to be taken into account together with the proposed enlargement. The "appropriate date" is the latest date of:
 - the date falling five years before the date on which it is planned to implement the proposals to make the enlargement;
 - the date when the school first admitted pupils;
 - the date (or the latest date) when any previous statutory proposals that involved enlarging the premises of the school were implemented.

For the purposes of an enlargement of school premises "capacity" is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Circular No: 21/2011);

- the making permanent of a temporary enlargement of the school where that temporary enlargement would have been a regulated alteration when undertaken but for the fact that it was temporary;
- the reduction in the physical capacity of a mainstream school, except where the proposed capacity will be greater than the highest number of pupils on roll at the school at any time in the previous two school years prior to the publication of the proposal. In this context, "capacity" is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011 Measuring the Capacity of Schools in Wales)¹⁴;
- the addition or removal of SEN provision or any change in the type of such provision. This is where the provision is in a mainstream school but the pupils who are admitted are in addition to admission number of the school. The provision **must** also be recognised by the local authority as reserved for pupils with SEN;
- the introduction or ending of banding arrangements for the admission of pupils into a mainstream school (under section 101 of the School Standards and Framework Act 1998 (the 1998 Act));
- the introduction or ending of boarding, or an increase or decrease in boarding provision in mainstream schools by 50 pupils or 50% of capacity, whichever is the greater;
- for special schools (except where the school is in a hospital) an increase in the number of pupils for whom the school makes provision which, when taken together with all such previous increases in the number of pupils, would increase the number of pupils by 10% or the relevant number of such pupils (whichever is the lesser). The relevant number is 5 where the school only makes boarding provision, and is 20 in other cases. Any previous increase in the number of pupils is taken from the appropriate date. The appropriate date is whichever is the latest date of the following:
 - 19 January 2013;
 - the date when the school first admitted pupils; and
 - the date (or the latest date) when any previous statutory proposals that involved enlarging the premises of the school were implemented.
- for a special school, the introduction or ending of boarding provision, or the alteration of boarding provision such that the number of pupils for whom provision is made is increased or decreased by 5 pupils;

¹⁴ The effect of this is that where schools have spare capacity that capacity can be removed without the need for a statutory proposal. However, where schools are full or near full, a proposal must be published to reduce the school's capacity.

- a change in the type of special educational needs for which a special school makes provision;
- the enlargement, or making permanent of a temporary enlargement, of the teaching space at a nursery school, by 50% or more;
- the addition or removal of provision (in a nursery school) which is recognised by the local authority as reserved for pupils with special educational needs;
- for a nursery school at which a group of pupils is taught wholly or mainly through the medium of Welsh, an alteration so that all the pupils are taught wholly or mainly through the medium of English;
- for a nursery school at which a group of pupils is taught wholly or mainly through the medium of English, an alteration so that all the pupils are taught wholly or mainly through the medium of Welsh.

2.3 Who can publish a proposal?

The following table sets out the powers to publish proposals under sections 41-45 of the 2013 Act:

Local Authority	Governors of Foundation or Voluntary Schools	Promoters of New Voluntary Schools (including local authorities)	Governors of Community schools
Proposals to discontinue a voluntary or foundation school.	Proposals to discontinue their school.		
Proposals to increase/decrease the capacity of a foundation or voluntary school without a religious character.	Proposals to make a significant alteration to their school.		
Proposals to establish, discontinue or make a significant alteration to community schools.		Proposals to establish a new voluntary school.	
Proposals to change the category of community schools.	Proposals to change the category of their school.		Proposals to change the category of their school.

Local authorities may also make proposals to add or remove school sixth forms at voluntary and foundation secondary schools, but only if they have first gained the consent of the Welsh Ministers to do so. Consent **must** be sought by means of a written application that clearly sets out the local authority's rationale for the proposal.

In addition, the 2013 Act provides the Welsh Ministers with the power to publish proposals to:

- a) remedy excessive or insufficient provision of school places (where they have already issued a direction to a local authority or governing body to that effect) (section 59);
- b) secure regional provision for special educational needs (where they have already issued a direction to a local authority/local authorities/governing bodies to that effect) (section 68); and
- c) add or remove school sixth forms (section 71) .

3. Consultation

3.1 Principles

Section 48 of the 2013 Act requires that before school organisation proposals are published under sections 41-45, they **must** first be subject to consultation. In addition, proposals published under section 68 by the Welsh Ministers to secure regional provision for special educational needs or published under section 71 to reorganise sixth forms **must** also be subject to prior consultation. The requirement to consult does not apply to proposals to discontinue a small school¹⁵ made under section 43.

Case law has established that the consultation process **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; and;
- ensure that the product of consultation is conscientiously taken into account when the ultimate decision is taken.

The process and guidance which follow have been developed with due regard to the principles listed above. Those considering bringing forward proposals will need to be fully aware of this process and guidance. However, proposers **must** be mindful of the four underlying principles and take any necessary additional steps to ensure that those principles are fully upheld.

From time to time proposers will have conducted 'informal' consultation with particular stakeholders at an earlier stage in the development of proposals. Such consultation **must not** be seen as a substitute for any part of the formal consultation processes set out below.

3.2 Consultation document

Those bringing forward statutory proposals **must** publish a consultation document in hard copy and electronically on their website or that of the relevant local authority. Hard copies **must** be available on request. Consideration **should** be given to publishing in other formats where accessibility might otherwise be an issue.

The following **must** receive either a hard copy of the consultation document or be emailed a link to the relevant website (but see also the section on Consultation with Children and Young People):

¹⁵ The 2013 Act defines a small school as 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. This date is chosen as it is the date that all schools in Wales are required to submit the Pupil Level Annual Census to the Welsh Government; this includes the number of pupils on roll.

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- parents (and where possible prospective parents) carers and guardians, and staff members of those schools;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school; and
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

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

- a detailed description of the status quo setting out its strengths and weaknesses and the reasons why change is considered necessary;
- a detailed description of the proposal or proposals (a proposer may consult on more than one potential proposal), the projected timetable for statutory procedures and for implementation of the proposals and any proposed interim arrangements which might be necessary for their implementation. In describing the proposals, proposers **should** normally refer to them using the terms set out in this Code (e.g. school closure) but where two or more existing schools become one school operating on more than one site (e.g. where former infant and junior schools become a primary school) the terms 'merger' or 'amalgamation' might be used;
- the expected benefits of the proposals and disadvantages when compared with the status quo;
- any risks associated with the proposals and any measures required to manage these;
- a description of any alternatives considered and the reasons why these have been discounted;
- information on any changes to learner travel arrangements were the proposals to be implemented and the impact on accessibility of provision.

Details of affected schools

- the names, locations and categories (i.e. community, voluntary controlled, voluntary aided, foundation) of all existing schools likely to be affected by the proposals (for example, in the case of a proposal to close a school information **should** be provided about all the surrounding schools to which it might reasonably be considered that pupils may wish to transfer);
- the number of pupils on roll currently¹⁶ and the figures recorded for the previous four annual school censuses at all existing schools likely to be affected by the proposals;

¹⁶ For primary schools, the number of nursery pupils should be shown separately and excluded from forecasts.

- five year forecasts of pupil rolls at all existing schools likely to be affected by the proposals both currently (i.e. based on the existing configuration of schools) and if the proposals are implemented;
- the pupil places capacity¹⁷ of all existing schools likely to be affected by the proposals;
- the number of nursery places at any existing school likely to be affected by the proposals;
- information about the quality of accommodation at all existing schools likely to be affected by the proposals including reference to the condition category of the school as identified by the 21st Century Schools Survey;
- the language medium of all existing schools likely to be affected by the proposals (using the Welsh Government Circular 23/2007 “Defining schools according to Welsh medium provision”).

Quality and standards in education

- the likely impact of the proposals on the quality of the following (reference to relevant Estyn Key Questions are included in brackets):
 - a. outcomes (standards and wellbeing);
 - b. provision (learning experiences, teaching, care support and guidance, and learning environment);
 - c. leadership and management (leadership, improving quality, partnership working and resource management);

at the school or schools which are the subject of the proposals and at any other school or educational institution which is likely to be affected.

- information from the most recent Estyn reports for each school likely to be affected;
- the likely impact of the proposals on the ability of school or schools which are the subject of the proposals or any other school which is likely to be affected, to deliver the full curriculum at the foundation phase and each key stage of education.

Finance

- the financial costs of the proposal and any potential savings (including where appropriate the current costs per pupil and the projected costs upon completion) – capital and recurrent (including school transport and staff costs);
- the sources from which capital funding will be provided;
- how any capital receipts or recurrent costs savings will be deployed;

¹⁷ The Welsh Government Circular 21/2011 “Measuring the Capacity of Schools in Wales”.

Land and buildings

- details of any potential transfer or disposal of land or buildings that may need to occur as a result of the proposals.

Consultation details

- details of how people can make their views known including the address to which comments in writing can be made and the deadline for those comments;
- details of how people can ask further questions about the proposals;
- a statement to the effect that responses to consultation will not be counted as objections to the proposal and that objections can only be registered following publication of the notice;
- and explanation of the publication process, the making of objections and determination of published proposals;
- a pro-forma for comments, including an opportunity for consultees to suggest alternatives to the proposals and to register their wish to be notified of publication of the consultation report.

Where proposals involve establishing a new school the following information **must** also be included in the consultation document:

- the new school's:
 - a. proposed admission number and admission arrangements;
 - b. age range;
 - c. pupil places capacity and/or number of nursery places;
 - d. location;
 - e. category (i.e. Community, Voluntary Aided or Voluntary Controlled);
 - f. language category (as defined by Information document No. 023/2007);
 - g. details of the proposed accommodation to include a list of proposed facilities;
 - h. in the case of a special educational needs (SEN) resource base in a mainstream school or a special school, information on the special needs of the pupils proposed to be admitted;

- i. home to school transport arrangements (including any transitional arrangements) and the local authority's transport policy.¹⁸

Where proposals involve the closure of a school the following information **must** be included in the consultation document:

- details of any alternatives to closure that have been considered and the reasons why these have not been taken forward;
- the impact of proposals on the local community, particularly in rural areas and in areas designated for communities first programmes or successor programmes;
- the likely impact on staff of schools named in proposals;
- in the case of alternative provision:
 - a. the name and location of the proposed alternative provision;
 - b. a comparison of the quality and standard of education provided at the school from which pupils would be transferred and the proposed alternative school or schools and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
 - c. admission arrangements at the proposed alternative school;
 - d. a comparison of the quality of accommodation at the school from which pupils would be transferred and at the proposed alternative and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
 - e. information on any building works necessary to ensure that transferred children can be accommodated at the alternative provision;
 - f. the impact on pupils' journeys to school and on school transport costs; and
 - g. information regarding available walking routes to the alternative provision;
 - h. the language medium at the proposed alternative school.

Where proposals relate to a special school or involve specialist resource bases attached to mainstream schools the following information **must** be included in the consultation document:

- the impact on SEN provision;
- how proposals will contribute more generally to enhancing the quality of education and support for children with SEN.

¹⁸ Section 3 of the Learner Travel (Wales) Measure 2008 sets a threshold for entitlement for free home to school transport provision at 2 miles or further for primary education and 3 miles or further for compulsory aged secondary school education.

Where any school involved or affected provides teaching through the medium of Welsh the following information **must** be included in the consultation document:

- the impact of proposals on the Welsh language (see the Welsh language impact assessment at Annex D).

Where the proposal concerns a school with a designated religious character the following information **must** be included in the consultation document:

- the impact on availability and access to places at a school with the same designated religious character.

Where the proposal concerns a change of category the following information **must** be included in the consultation document:

- the effect of the change of category on governance arrangements and the governing body's powers over policies and arrangements in respect of admissions, employment and the curriculum; and
- any proposed changes to policies and arrangements in respect of admissions, employment and the curriculum.

In some circumstances, proposers may consider it appropriate to consult on a range of options rather than one specific proposal, but in such cases, all of the information set out above **must** be provided in relation to each of the identified options.

A recommended template consultation document is at Annex C. Proposers are not required to adhere to the suggested format, but **must** ensure that any alternative format they choose to adopt provides the required information.

3.3 Consultation with children and young people

Proposers **must** also make suitable arrangements to consult with pupils of any affected school (or part of a school in the case of provision reserved for children with SEN) and, where possible, with 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 this is appropriate and practicable. Governing bodies **must** help facilitate this aspect of the consultation.

The information given to children and young people **must** be presented in such a way that it is relevant to their age and level of likely understanding and allows them to reach an informed opinion. The agreed children and young people's participation standards for Wales are available on the Welsh Government's website; proposers **should** refer to these and act in accordance with them.

If consulting with individual learners, proposers **should** produce and distribute a version or versions of the consultation document appropriate to the age/ages of the children and young people affected. The consultation document **should** also clearly

explain to children and young people the difference between the consultation and objection periods and how and when they can object to proposals. Where necessary, proposers **should** provide assistance to children and young people who wish to submit a consultation response.

3.4 Procedures

There is no requirement for proposers to hold consultation meetings although there will be circumstances where proposers will consider that meeting with certain groups of consultees will assist greatly in the dissemination of information and provide a suitable platform for the consultees to make their views known. Where meetings are arranged, proposers **should** ensure that they are arranged in such a way that consultees in any of the categories set out a paragraph 3.2 are treated fairly and equitably. A full written record **should** be made of the issues raised and the answers provided at any meetings which are held.

Proposers may use other ways to engage consultees as they think appropriate. For example, open days or 'drop-in' sessions might provide interested parties with a convenient way to access information, seek clarification and provide comments.

In the case of proposals to reorganise schools for which land and/or buildings are held on trust, or which have a designated religious character, the proposer **must** conduct consultation with the trustees and/or appropriate religious body before the consultation document is published. The proposer **must** allow 28 days for the receipt of comments and **must** have due regard to those comments before any decision is made to proceed to general consultation.

Where, in the course of consultation, a new option emerges which the proposers decide to pursue, they **must** consult afresh on this option before proceeding to publication.

3.5 Consultation reports

Within 13 weeks of the end of the period allowed for responses (and in any event prior to publication of the proposals), the proposer **must** publish a consultation report:

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

The consultation report might also make recommendations – for example, to the local authority's executive or the governing body – about how to proceed i.e. to publish the proposals as consulted on with any appropriate modifications, to abandon the proposals and retain the status quo or to significantly recast the proposals and re-consult.

Proposers **must** ensure that any views expressed by children and young people affected by the proposals are highlighted in the consultation report and that it is accessible to them.

The consultation report **must** be published electronically, either on the proposer's website or if one is not available, on the relevant local authority's website. In addition, hard copies **must** be available on request. This **must** take place before any proposal is published.

The following **must** be advised of the availability of the consultation report:

- Pupils, parents (and where possible prospective parents) carers and guardians, and staff members of schools which are subject to the proposals;
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school; and
- consultees who had requested notification.

The following **must** receive either a hard copy of the consultation report or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected – including in the case of dedicated SEN provision any authority placing or likely to place statement pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;

- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

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 period allowed for consultation responses, otherwise the proposals will lapse and a new consultation document **must** be issued to revive them.

Applications to the Welsh Ministers for a time extension **must** be made in writing before the 26 week period has elapsed and **must** set out the reasons why an extension is considered necessary. In deciding whether to approve an extension, the Welsh Ministers will take into account the reasons given for the application, the nature of the proposals and any other relevant factors. The Welsh Ministers would be unlikely to approve any application which would result in more than a year elapsing between the end of the period allowed for consultation responses and the publication of a statutory notice.

Statutory proposals are sometimes brought forward as a result of strategic reviews into school provision carried out by local authorities. Whilst it is good practice to consult on such reviews, such consultation **must not** take the place of the formal consultation necessary on individual proposals as required by the Code.

Where the prospective proposers are not a local authority they **should** discuss their intentions with the local authority which would maintain any proposed new or altered provision at an early stage, i.e. before formal consultation commences.

Proposers **should not** refer to the period allowed for objections as the consultation period. The term consultation only applies to the period before final decisions are made to proceed to publish a proposal.

Consultees can submit views either in favour of or against a proposal. Consultees **should** be advised that unfavourable comments made during the consultation period will not be treated as objections, and that if they wish to object, that they need to do so in writing during the statutory objection period. If consultees submit a request during the objection period that a response submitted at consultation stage should be treated as an objection, this **should** normally be accepted. Those responsible for publishing proposals **should** make every effort to ensure that those who have expressed opposition or concern during the consultation period are aware that statutory notices have been published.

4. Publication of statutory proposals

4.1 Manner of publication

Once the proposer decides to proceed with a proposal they **must** publish the proposal¹⁹ by way of statutory notice.

Proposals **must** be published on a school day and the objection period (see 4.2) **must** include 15 school days (in addition to the day on which it is published).

The proposals **must** be published:

- i. on the proposer's website (if it has one);
- ii. on the website of the existing/proposed maintaining local authority, where the local authority is not the proposer;
- iii. by being posted at or near the main entrance to any existing school which is the subject of the proposal, or, if there is more than one main entrance, all of them;
- iv. where a new school is being established, in a conspicuous place in the area to be served by the school;
- v. by providing any school which is the subject of proposals with copies of the notice to distribute to pupils, parents carers and guardians, and staff members (the schools may distribute the notice by email);
- vi. in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

Furthermore, on the day that they are published, the following **must** receive either a hard copy of the proposals or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;

¹⁹ Section 48 2013 Act.

- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People’s Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

It is no longer a requirement to publish the proposal in a newspaper.

4.2 Length of objection period

The 2013 Act requires that anyone wishing to make objections to a school organisation proposal has the opportunity to do so. To be considered as statutory objections, objections **must** be made in writing or by email, and sent to the proposer within 28 days of the date on which the proposal was published (“the objection period”).

4.3 Content of published proposals

The published proposals **must** all contain the following information:

- the name of the persons or body publishing the proposal;
- the planned date of implementation (or dates if implementation is to be staged);

- details of how to obtain a copy of the consultation report;
- the date by which objections should be sent and the address to send them to, including the relevant email address.

Additionally

- proposals to establish a new school **must** state:
 - the proposed language category of the school as defined by Information Document No: 023/2007;
 - the name of the proposed maintaining local authority;
 - the location of the site of the school (and where appropriate the postal address);
 - whether the school will be single or mixed sex;
 - the age range of the school;
 - the category of the school - community, voluntary aided, voluntary controlled, community special;
 - whether the governing body or the local authority will be the admissions authority;
 - the proposed arrangements for transport of pupils;
 - the admission number for each relevant age group in the first year of implementation or at each stage of implementation - “admission number” is to be determined in accordance with the calculation set out from time to time by the Welsh Ministers (currently contained in the Welsh Government Circular No: 21/2011);
 - the proposed capacity of the school – “capacity” is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011);
 - for a special school, information on the type of SEN for which provision will be made;
 - whether the school will have a religious character, and if so the nature of that character and the proposed appropriate religious body;
 - whether the admission arrangements of the school will make any provision for selection by ability permitted by section 101 of the School Standards and Framework act 1998 (pupil banding);
 - in the case of a new voluntary school, whether the proposals are to be implemented by the local authority or the promoters and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each such body.
- proposals to alter a school or change its category **must** state:
 - the name and address of the school subject to the proposal;

- the name of the maintaining local authority;
 - a description of the proposed alteration or change of category;
 - where the alteration involves enlargement, or a reduction in capacity, the current number of pupils, the capacity of the school and the proposed capacity – “capacity” is to be determined in accordance with the formulae set out from time to time by the Welsh Ministers (currently Welsh Government Circular No: 21/2011);
 - the number of pupils to be admitted in each relevant age group in the first year of implementation or at each stage of implementation;
 - in the case of a change in the type of SEN provision, the alternative provision for pupils and the impact on school transport; and
 - any implications the alteration might have on home to school transport provision.
- proposals to discontinue a school **must** state:
 - the name and address of school to be closed;
 - the name of the maintaining local authority;
 - the school’s religious character if it has one, and if so, the appropriate religious body;
 - details of the alternative school/s which pupils can attend, including any interim arrangements and the language category of the alternative school/s as defined by Information Document No: 023/2007;
 - details of any measures being taken to increase the number of places available in alternative schools; and
 - arrangements for transport of pupils to alternative schools.

Note: Sometimes a proposal will need to incorporate two separate elements, e.g. a school might transfer to a new site and also be enlarged. In this case two proposals, which can be incorporated into one statutory notice, may be necessary.

Annex B comprises several recommended statutory notice templates which proposers may find helpful in the construction of a statutory notice.

5. Determining proposals (other than proposals made by the Welsh Ministers)

5.1 Objection reports

Under section 49 of the 2013 Act proposers **must** publish a summary of the statutory objections and the proposer's response to those objections ("the Objection Report"). This **must** take place:

- (a) in the case of a local authority that is required to determine its own proposals under section 53 of the Act (see 5.4 below), before the end of 7 days beginning with the day of its determination; and
- (b) in all other cases, before the end of 28 days beginning with the end of the objection period.

The Objection Report **must** be published by being posted:

- i. on the proposer's website (if it has one);
- ii. on the website of the existing/proposed maintaining local authority, where this differs from i above.

In addition, hard copies **must** be made available on request.

The following **must** be advised of the availability of the Objection Report:

- Parents (and where possible prospective parents) careers and guardians, and staff members of schools which are the subject of the proposals; and
- in the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

The following **must** receive either a hard copy of the objection report or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;

- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposal;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest in the case of proposals affecting secondary provision, any further education institutions serving the area of the school;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

5.2 Approval by the Welsh Ministers

Proposals require approval by the Welsh Ministers 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 and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

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.

Where a proposal requires determination by the Welsh Ministers, the proposers **must** notify the Welsh Ministers within 35 days of the end of the objection period and forward to them copies of the statutory objections in addition to the objection report set out at paragraph 5.1. The proposer **must** also send to the Welsh Ministers any proposals which it considers are related to the proposals requiring determination. The Welsh Ministers will then decide whether these other proposals require determination by them.

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. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published. Before making any modification, the Welsh Ministers **must** first consult with the proposer and the relevant governing body/ies and local authority (where they are not the proposers), and obtain the proposer's agreement to the modification.

Approvals can be made conditional on a specified event occurring by a specified date.

5.3 Approval by the local authority

Proposals published under section 48 require approval under this section if:

- (a) they do not require approval by the Welsh Ministers;
- (b) they have been made by a proposer other than the relevant local authority; and
- (c) an objection to the proposals has been made and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.

Procedures

Where proposals require approval by the local authority, the proposer **must** notify the local authority of a proposal requiring approval and forward to them the documents listed below within 35 days of the end of the objection period:

- a copy of the consultation document;

- a copy of the consultation report;
- a copy of the published notice;
- a copy of the objection report;
- copies of the statutory objections;
- copies of all of the above in relation to any proposals which are related to the proposals requiring approval.

Local authorities **must** decide whether any related proposals sent to them require their approval.

They **must** deal with all proposals which require approval without delay in so far as that is compatible with the proper consideration of the issues. In any event, the local authority **must** issue its decision, within 16 weeks (112 days) beginning with the end of the objection period. However a failure to comply with that time limit does not affect the validity of any decision reached.

Local authorities **must** decide whether to approve, reject or approve with modifications, the proposals.

Modifications can only include changes to matters related to implementation such as changes to admission numbers or to the timing of implementation. The local authority **must not** make modifications that would, in effect, substitute a new proposal for the proposal which was published. Before making any modification, the local authority **must** first consult with the proposer and obtain their consent to the modification. They **must** also obtain the consent of the Welsh Ministers. If consent cannot be obtained, and the local authority believes that the proposals are not acceptable in their published state, they **must** reject the proposals. The local authority **must** also consult with the governing body of any school to which the proposals relate (where the governing body is not the proposer).

Approvals may be made conditional on a specified event occurring by a specified date.

5.4 Determination by proposers

Where proposals do not require approval under section 50 and 51 of the 2013 Act, they fall to be determined by the proposer.

Under section 53 of the 2013 Act, determination by the proposer **must** be made within 16 weeks (112 days) of the end of the objection period. Where the proposer fails to determine the proposal within the period of 16 weeks it is taken to have withdrawn the proposal and it is required to republish the proposals if it wishes to proceed.

Where a local authority's proposals have received objections, and require determination under section 53 of the 2013 Act, 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 set out in section 1.3 – 1.14 of this Code. In these cases the objection report **must** be published at the same time as the decision is issued rather than within 28 days beginning with the end of the objection period.

5.5 Local authority decision making

Where local authorities are required to approve or determine proposals which have received objections, a proposed amendment²⁰ to Schedule 2 to the Local Authority (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended) will permit the local authority's executive to exercise this function. Executives and/or Cabinets are already responsible for overseeing school organisation planning, including decisions to consult on and to publish school organisation proposals and will have a well developed understanding of school organisation issues. This understanding, combined with their more general experience of decision making and the fact that they are democratically accountable to the local electorate, makes executives well placed to decide whether or not contested school organisation proposals should be approved.

However, if they choose to do so, local authorities will not be prevented by Schedule 2 to the relevant regulations from adopting alternative, locally agreed processes for taking such decisions. These might include the formation of a local decision making committee, potentially in collaboration with other local authorities in their region.

Where local authorities choose to follow this route, they will need to consider carefully how they will ensure that such bodies deliver fair and robust decision making.

Annex E provides details of a possible model for a local decision making committee.

5.6 Decision notification

Decisions (in relation to proposals which require approval or determination) **must** be made and issued in writing and **must** set out clearly the reasons for the decision.

Decisions **must** be published electronically on the proposer's website (if it has one) and that of the relevant local authority (if different).

The following **must** be advised of the availability of the decision:

- Parents (and where possible prospective parents) careers and guardians, and staff members of schools which are the subject of the proposals;
- In the case of proposals affecting secondary provision, parents of pupils attending primary schools from which pupils normally transfer to that secondary school.

²⁰ Once Part 3 of the 2013 Act is commenced, the Welsh Ministers intend to lay amending regulations to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 so that they come into force at the same time that Part 3 is operational.

The following **must** receive either a hard copy of the decision letter or be emailed a link to the relevant website:

- the maintaining or proposed maintaining authority for any school likely to be affected by the proposals;
- any other local authority likely to be affected - including in the case of dedicated SEN provision any authority placing or likely to place statemented pupils in it;
- the Church in Wales and Roman Catholic Diocesan Authority for the area in which any school likely to be affected is located;
- any other appropriate religious body for any school likely to be affected by the proposals;
- the governing body of any school which is the subject of the proposals and of other schools likely to be affected by the proposals, including those that might receive any displaced pupils;
- the Welsh Ministers;
- Assembly Members (AMs) and Members of Parliament (MPs) representing the area served by/intended to be served by any school which is the subject of the proposals;
- Estyn;
- teaching and staff trade unions representing teachers and other staff at any school which is the subject of the proposals;
- the relevant Regional Education Consortium;
- the relevant Regional Transport Consortium;
- the Police and Crime Commissioner for the area served by/intended to be served by any school which is the subject of the proposals;
- any community or town council for the area served by/ intended to be served by any school which is the subject of the proposals;
- the local Communities First Partnership (in relevant areas);
- in the case of proposals affecting nursery provision, any independent providers who may be affected;
- in the case of proposals affecting nursery provision, the Children and Young People's Partnership and/or the Early Years Development and Childcare Partnerships where present;
- in the case of proposals affecting SEN provision, any relevant health or third sector bodies with an interest;
- in the case of proposals affecting secondary provision, any further education institutions serving the area of the school.

5.7 Referral of local authority decisions to the Welsh Ministers

Under section 54 of the 2013 Act where proposals have been approved or rejected by a local authority 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;
- 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. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published. Before making any modification, the Welsh Ministers **must** first consult with the proposer and the relevant governing body/ies and local authority (where they are not the proposers), and obtain the proposer's agreement to the modification.

Approvals can be made conditional on a specified event occurring by a specified date.

Proposals to discontinue a small school may not be referred to the Welsh Ministers.

6. Implementing proposals

6.1 Implementation – general

Proposals **must** normally be implemented as determined or approved (with or without modifications).

However, if a proposer is satisfied, after consultation with any affected governing body, that a proposal would be unreasonably difficult to implement on the original implementation date, or that circumstances have so altered since the proposal was approved that its implementation on the original date was inappropriate, it may modify the proposal so that its implementation is delayed by up to three years.

If a proposer is satisfied, after consultation with any affected governing body, either that implementation of proposals would be unreasonably difficult or that circumstances have so altered since the proposals were approved that their implementation would be inappropriate altogether, it may determine that the proposals should be abandoned.

In the case of proposals to close a school, and after consultation with any affected governing body, a proposer may also determine to bring forward implementation by a period of up to 13 weeks. Implementation **must** only be brought forward where a school has no remaining pupils on roll or so few pupils that delivery of the curriculum is severely compromised.

Where proposals have received approval by the local authority or the Welsh Ministers, proposers **must** only make a determination to delay, bring forward or abandon a proposal with the agreement of the Welsh Ministers. Any such application for agreement **must** be made in writing with the proposer's reasons clearly set out.

Notification of any determination to delay, bring forward or abandon a proposal **must** be given to relevant parties including the Welsh Ministers, Estyn, the maintaining local authority, the relevant Regional Transport Consortia and the governing bodies, parents, pupils and staff of any affected school, as appropriate, within seven days of it being made. The notification **must** set out, briefly, the reasons for that determination.

If a proposal has been approved by the Welsh Ministers or by a local authority subject to a specified event occurring by a specified date, and that condition is not met by that date, the proposals **must** be considered as rejected unless the proposer has sought and received agreement from the Welsh Ministers or the local authority to have that condition varied by the substitution of a later date.

6.2 Implementation – change of category

Part 3 of Schedule 5 to the 2013 Act sets out full details relating to the transfer of land. Any transfers will take place on the implementation date. Where a community school becomes a voluntary aided or voluntary controlled school, any land other than

playing fields held by a local authority transfers automatically to the school's trustees.

Where a foundation, voluntary aided or voluntary controlled school without a religious character becomes a community school any publicly funded land transfers automatically to the local authority. Publicly funded land is defined in schedule 4 to the 2013 Act and includes land provided by the local authority or by means of a capital grant (within the meaning of Chapter 6 of Part 3 to the Education Act 1996). Any other land held by trustees or the governing body **must** be transferred to the local authority by means of a transfer agreement to be drawn up by the parties. Such a transfer may be subject to an agreed payment by the local authority. If the parties are unable to reach agreement in relation to a transfer, either party may apply Welsh Ministers to exclude the transfer of any area of land. The Welsh Ministers **must** then decide whether or not to direct its exclusion.

7. The closure of a school with fewer than 10 registered pupils

Where a school has fewer than 10 registered pupils (or there are no pupils remaining at a school) at the January census point the 2013 Act permits governing bodies/local authorities to undertake a streamlined procedure to bring about official closure.

This consists solely of the issue of the notice of closure – the requirement for general consultation being waived, provided sufficient equivalent school places have been identified which would be reasonably accessible to those pupils actually or potentially displaced. If objections are made, the proposal would be determined in all cases by the proposer. However, before bringing forward such proposals, proposers **must** seek the views of any trust with an interest in the school or the appropriate religious body and take these views into account before proceeding.

In the case of schools where some pupils remain, proposers **must** make sure that the closure notice is brought to the pupils' attention, that its meaning is made clear to them, and that appropriate steps are taken to enable these pupils to respond to the notice if they so wish. It is essential that pupils are provided with the opportunity to contribute to the decision making process and proposers **must** ensure that full account is taken of any views they express before a final decision is taken.

Proposers are encouraged to share information with parents and other schools and **should** ensure that they receive a copy of the notice. Any schools identified as those most likely to receive pupils **must** also be notified.

The existence of streamlined procedures in relation to the proposed closure of schools with fewer than 10 registered pupils does not mean that governing bodies or local authorities are required to bring forward closure proposals in relation to such schools. The possible closure of such schools **should** be considered in the light of the factors set out at section 1.

8. Proposals by the Welsh Ministers to rationalise school places

Where the Welsh Ministers have previously directed a local authority or governing body to bring forward proposals to remedy excessive or insufficient school places, they may publish their own proposals to the same effect.

The specific criteria upon which the Welsh Ministers might decide to issue a direction or subsequently publish a proposal, would vary depending on the circumstances pertaining to a particular area, but in general terms these are 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.

The proposals **must** be published in accordance with the provisions included in Chapter 4 above.

Any person may object to the proposals within the 28 day objection period. If objections are received, the Welsh Ministers **must** cause a local inquiry to be held to consider the proposals. 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 proposal which is the subject to objection (and unless the Welsh Ministers form the opinion that they should be implemented).

The local inquiry **must** be conducted by a person appointed for that purpose by the Welsh Ministers and in accordance with any procedures set out by them at the time of the local inquiry's establishment.

Where a local inquiry has been held, the Welsh Ministers **must** consider the report of the person conducting the local inquiry. They may then do one of the following:

1. adopt with or without modifications, or determine not to adopt any of the proposals made by the Welsh Ministers;
2. approve with or without modifications, or reject any other proposals which are referred to the local inquiry;
3. make further proposals to rationalise school places.

If the Welsh Ministers decide to make further proposals there is no requirement to cause a further local inquiry to be held.

Where these further proposals made by the Welsh Ministers have not been referred to a local inquiry the Welsh Ministers may after considering any objections:

1. adopt the proposal with or without modifications; and
2. determine not to adopt the proposal.

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be approved or adopted subject to a specified event occurring by a specified date.

Proposals approved or adopted **must** be implemented in accordance with Chapter 6 above.

9. Proposals by the Welsh Ministers for regional provision for special educational needs

Where the Welsh Ministers have previously made an order directing a local authority or a governing body to bring forward school organisation proposals for the purpose of securing regional provision for children with special educational needs, they may publish their own proposals to the same effect.

The proposals **must** be consulted upon in accordance with Chapter 3 above and published in accordance with Chapter 4.

Any person may object to the proposals within the 28 day objection period.

The Welsh Ministers may, after considering any objections;

1. adopt the proposals with or without modification;
2. determine not to adopt the proposals.

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be adopted subject to a specified event occurring by a specified date.

Proposals which are adopted **must** be implemented in accordance with Chapter 6 above.

10. Proposals by the Welsh Ministers to restructure sixth form education

Under section 71 of the 2013 Act, the Welsh Ministers may make proposals for:

1. the establishment by a local authority of a school or schools to provide secondary education suitable to the requirements of sixth formers only (a 'sixth form school');
2. the introduction or ending of sixth form provision at a school, or;
3. the discontinuance of a sixth form school.

The proposals **must** be consulted upon in accordance with Chapter 3 above and published in accordance with Chapter 4.

Any person may object to the proposals within the 28 day objection period.

The Welsh Ministers may, after considering any objections;

1. adopt the proposals with or without modification
2. determine not to adopt the proposals

Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation. The Welsh Ministers **must not** make modifications that would in effect substitute a new proposal for the proposal which was published.

Proposals can be adopted subject to a specified event occurring by a specified date.

Proposals which are adopted **must** be implemented in accordance with Chapter 6 above.

11. Governing body notice to discontinue a foundation or voluntary school

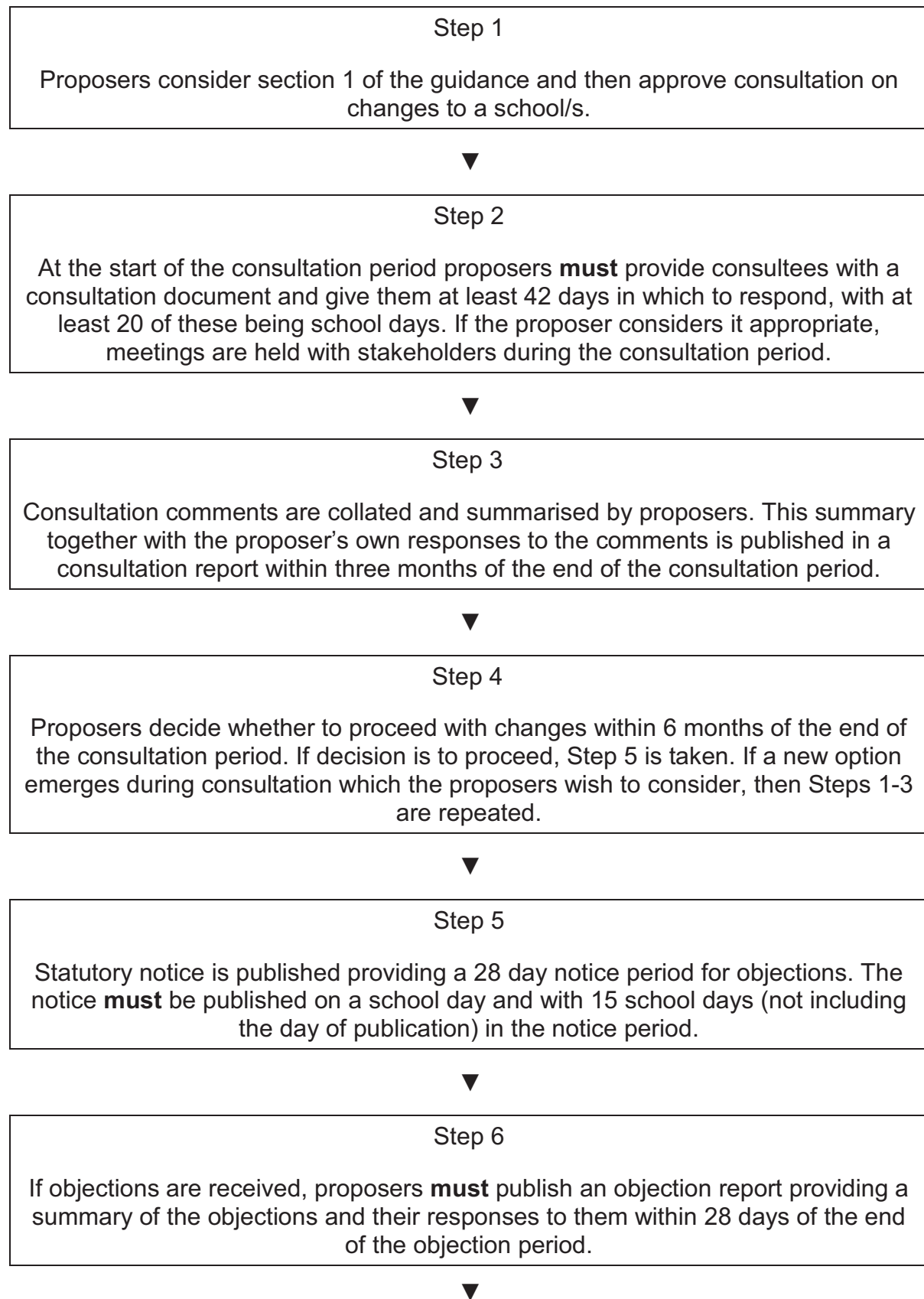
Section 80 of the 2013 Act permits the governing body of a foundation or voluntary school to discontinue the school by giving the Welsh Ministers and the local authority responsible for maintaining the school two years notice of its intention to do so.

Being given notice, the governing body **must**:

1. gain the consent of the Welsh Ministers if expenditure has been incurred on the school premises (otherwise than in connection with repairs) by the Welsh Ministers or local authority;
2. consult the Welsh Ministers if discontinuing the school would affect facilities for full time education suitable to requirements of persons over compulsory school age who have not attained the age of 19; and
3. consult the trustees for any land or buildings held on trust and/or the appropriate religious body where the school has a designated religious character and have regard to any comments which are received.

Where governing bodies require advice in relation to property held on charitable trust, they **should** contact the Charity Commission.

Annex A: Illustrative flow chart for statutory proposals



Step 7a	Step 7b	Step 7c
<p>If the proposal does not require approval by the Welsh Ministers or the local authority, it must receive final determination by proposers within 16 weeks of the end of the objection period.</p>	<p>If the proposal requires determination by the Welsh Ministers, the proposer must send to the Welsh Ministers within 35 days of the end of the objection period the objections and the objection report. The Welsh Ministers will normally determine proposals within 16 weeks of the end of objection period.</p>	<p>If the proposal requires determination by the local authority, the proposer must send to the local authority within 35 days of the end of the objection period the consultation document, the consultation report, the published notice, the objections and the objection report.</p> <p>The local authority must issue a decision within 16 weeks of the end of the objection period.</p> <p>Within 28 days of the local authority's determination proposals may be referred to the Welsh Ministers by the following:</p> <ol style="list-style-type: none"> i. Another local authority; ii. The appropriate religious body for any school affected (the 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 v. A further education institution affected by the proposals.



Step 8
<p>If proposals receive approval or the proposer determines to implement them, they should be implemented in accordance with the date given in the statutory notice, or any subsequent modified date.</p>

Annex B: Examples of statutory notices

Example of a statutory notice to establish a new community or voluntary school

[Insert name and address of those publishing the proposals].

Notice is given in accordance with section 41 of the School Standards and Organisation Act 2013 and the School Organisation Code that [*proposer's name*], having consulted such persons as required, propose to establish a new [*state language category*²¹] school to be maintained by [*state name of maintaining local authority*] at [*state location and, where appropriate, the postal address*] for [*boys*]/ [*girls*]/ [*boys and girls*] aged [*insert age range*].

The [*insert name of proposer*] undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposer's responses and the views of Estyn is available on [*insert the proposer's website or if one is not available the relevant local authority's website*].

It is proposed to implement the proposal on [*insert date*]. [*Where implementation is planned in stages, the date on which each stage is planned to be implemented should be given*].

The proposed new school will be a [*insert community or voluntary aided or voluntary controlled*] school.

[*insert the governing body or the name of the local authority*] will be the admission authority.

The admission number for [*state the relevant age group or age groups*²²] at the new school in the first school year in which the proposals have been implemented is [*state number*] [*Where the proposals are to be implemented in stages, the admission number in the first school year in which each stage has been implemented must be given*]. [*If there is to be a separate admission number for the sixth form it should be included*].

The new school's pupil capacity will be [*insert capacity figure*²³]. [*It would also be useful to include the number of nursery places being provided if appropriate*].

[*For a special school, information on the special educational needs of pupils for which provision will be made*].

²¹ Proposers should refer to the Welsh Assembly Government information document 23/2007 Defining schools according to Welsh medium provision.

²² A "relevant age" group" is defined in section 142(1) of the 1998 Act as meaning "an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school". There could, therefore, be more than one relevant age group, in which case the number to be admitted must be given in relation to each such relevant age group.

²³ Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales.

[Give information on whether it is proposed that the admission arrangements for the new school will make provision for pupil banding].

[In the case of a new voluntary school, give information about its religious character and proposed appropriate religious body if it is to have a religious character].

[Give information about the proposed arrangements for transport of pupils to the new school].

[In the case of proposals to establish a new voluntary school, state whether the proposals are to be implemented by the local education authority or the promoters, and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each such body].

Within a period of 28 days after the date of publication of these proposals, that is to say by *[insert date]* any person may object to the proposals.

Objections should be sent to *[name and address of proposer]*.

Signed

For the *[local authority]*.

*[Date – **should** be the same as the date of publication].*

EXPLANATORY NOTE

[It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals].

Example of a statutory notice to discontinue a maintained community, foundation, voluntary or nursery school

[Insert name and address of those publishing the proposals].

Notice is given in accordance with section 43 of the School Standards and Organisation Act 2013 and the School Organisation Code that *[proposer's name]*, having consulted such persons as required, propose to discontinue *[name and address of school]*. The school is currently maintained by *[state name of maintaining local authority]* *[and if relevant, state school's religious character]*.

The *[insert name of proposer]* undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposers responses and the views of Estyn is available on *[insert the proposers website or if one is not available the relevant local authority's website]*.

It is proposed to implement the proposals on *[insert date]* (2).

[Insert details of the schools which pupils at the school to be discontinued may attend, including any interim arrangements and the language category of the alternatives as defined by Information Document No: 023/2007].

[Insert details of any other measures proposed to be taken to increase the number of school places available in consequence of the proposed discontinuance].

[Insert particulars of the proposed arrangement for transport of pupils to other schools].

Within a period of 28 days after the date of publication of these proposals, that is to say by *[insert date]* any person may object to the proposals.

Objections should be sent to *[name and address of the proposer]*.

Signed

For the *[local authority or governing body]*.

*[Date – **should** be the same as the date of publication].*

EXPLANATORY NOTE

[It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals].

Example of a statutory notice to make a regulated alteration to a maintained community, foundation, voluntary or nursery school

Notice is given in accordance with section 42 of the School Standards and Organisation Act 2013 and the School Organisation Code that [*proposer's name*], having consulted such persons as required, proposes to alter [*name and address of school*] so that [*add description of proposed change/s*]. The school/s is/are currently maintained by [*state name of maintaining local authority*].

The [*insert name of proposer*] undertook a period of consultation before deciding to publish this proposal. A consultation report containing a summary of the issues raised by consultees, the proposer's responses and the views of Estyn is available on [*insert the proposer's website or if one is not available the relevant local authority's website*].

It is proposed to implement the proposal on [*insert date*]. [*Where implementation is planned in stages, the date on which each stage is planned to be implemented should be given*].

[*Where the alteration involves enlargement, or a reduction in capacity, insert*], The current number of pupils at the school is [*insert number*], the pupil capacity of the school is [*insert pupil places capacity*²⁴] and the proposed capacity once the proposal is implemented will be [*insert proposed capacity*].

[*Where the alteration involves enlargement, or a reduction in capacity insert*] The admission number for [*state the relevant age group or age groups*²⁵] at the school in the first school year in which the proposals have been implemented will be [*state number*] [*include a separate sixth form number if appropriate*] [*Where the proposals are to be implemented in stages, the admission number in the first school year in which each stage has been implemented must be given*]. [*where appropriate*] There will be xx nursery places.

[*Where the alteration involves a change in the type of SEN provision, provide information on the alternative provision for pupils and the impact on school transport*].

Within a period of one 28 days after the date of publication of these proposals, that is to say by [*insert date*] any person may object to the proposals.

Objections should be sent to [*name and address of the proposer*].

The [*insert name of proposer*] will publish a summary of any such objections made (and not withdrawn in writing) within the objection period, together with their

²⁴ Proposers should refer to the Welsh Government Circular 21/2011 Measuring the capacity of schools in Wales.

²⁵ A "relevant age group" is defined in section 142(1) of the 1998 Act as meaning "an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school". There could, therefore, be more than one relevant age group, in which case the number to be admitted must be given in relation to each such relevant age group.

observations thereon, within the period of 28 days after the end of the objection period.

Signed

For the [*local authority or governing body*].

[*Date – **should** be the same as the date of publication*].

EXPLANATORY NOTE

[*It may be useful to include an Explanatory Note explaining the proposals in simple language and providing further information and background to the proposals*].

Annex C: Consultation document template

The following template sets out a suggested but not mandatory format for the information which is required to be included in a consultation document. This outline of the contents is not exhaustive and proposers would be expected to include additional elements depending on the nature and context of the proposals under consideration.

Introduction - Explanation of the consultation exercise

This section might set out that the proposers were considering the reorganisation of school places in a particular area and name the school/s affected. It might explain that before moving forward with its proposals, the proposers wished to seek the views of all those with a likely interest in the proposal/proposals so that their views can be taken into account before decisions are made.

This section might then set out the process by which consultation will be conducted, including:

- a list of all those being consulted (The interested parties with whom proposers **must** consult are set out at Section 3 of the Code. However, it is expected that proposers would also consult with interested parties who are not included in this list where that was appropriate in the context of a specific proposal);
- if meetings are to be held, the date, time, venue and audience of any such meetings (allowing sufficient notice for likely attendees);
- the name and address of the person to whom written comments on the proposal/s should be sent, and the deadline for the receipt of these comments;
- the arrangements made for children and young people to participate; and
- the details of any other consultation arrangements such as open days, exhibitions, etc.

Background to the proposal/s

This might set out the following details for all schools affected or likely to be affected by the proposals, including schools which might in future be expected to receive additional pupils, and special schools:

- the names, locations, categories and language categories of all existing schools likely to be affected by the proposal (for example in the case of a proposal to close a school information **should** be provided about all the surrounding schools which it may be reasonably considered that pupils may wish to transfer);
- the number of pupils on roll currently and the figures recorded for the previous four annual school censuses at all existing schools likely to be

- affected by the proposals (for primary schools, the number of nursery pupils **should** be shown separately and excluded from forecasts);
- five year forecasts of pupil rolls at all the existing schools likely to be affected by the proposal both currently (i.e. based on the existing configuration of schools) and if the proposal is implemented;
- the pupil places capacity (based on the Welsh Government Circular No 21/2011"Measuring the Capacity of Schools in Wales");
- the number of nursery places where applicable;
- the number of sixth form places where applicable; and
- the quality of accommodation with reference to categories of condition of the buildings of the schools as provided in any schools surveys.

Where the proposal is to establish a new school:

- the new school's:
 - proposed admission number and admission arrangements;
 - age range;
 - pupil places capacity and/or number of nursery places;
 - location and accessibility;
 - category;
 - language category (and an explanation of this); and;
 - details of the proposed accommodation to include a list of proposed facilities;
 - the home to school transport arrangements and policy of the local authority together with information of safe walking routes; and
 - In the case of a special educational needs (SEN) resource base in a mainstream school or a special school, information on the special needs of pupils.

Where the proposal is to close a school:

- details of any alternatives to closure that have been considered and the reasons why these have not been taken forward;
- the impact on any affected school or provider – particularly on alternative schools named in a closure proposal;
- the impact of the proposals on the local community, particularly in rural areas and in areas designated for Communities First programmes or successor programmes;
- the likely impact on staff of schools named in a proposal;
- in the case of the transfer of pupils to a different location:

- the name and location of the proposed alternative provision;
- a comparison between the quality and diversity of education provided at the school from which pupils would be transferred and the proposed alternative/s and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
- admission arrangements at the proposed alternative school;
- a comparison between the quality of accommodation at the school from which pupils would be transferred and the proposed alternative and an outline of any steps necessary in order to ensure that any shortcomings in the latter are addressed;
- information on how the transferred children will be accommodated at the alternative school including projected class sizes following implementation;
- the impact on pupils' journeys to school;
- the availability of safe waking routes to alternative schools.

Where proposals relate to a special school or involve dedicated SEN provision in a mainstream school:

- the impact on SEN provision; and
- how the proposals will contribute more generally to enhancing the quality of education and support for children with SEN.

Where any school involved or affected provides teaching through the medium of Welsh:

- the impact of proposals on the Welsh language (see Welsh language impact assessment at Annex D).

Where the proposal concerns a school with a designated religious character:

- the impact on availability and access to schools of the same religious character.

Where the proposal concerns a change of category:

- the effect of the change of category on governance arrangements and the governing body's powers over policies and arrangements in respect of admissions, employment and the curriculum; and
- any proposed changes to policies and arrangements in respect of admissions, employment and the curriculum.

Where the proposal involves a potential disposal or transfer of land or buildings, details of the same.

This section might also explain why the current schools provision is considered inadequate or unsatisfactory by reference, as appropriate, to the factors set out in Section 1 of the Code.

The proposals - Description and rationale

This section might set out a detailed description of the status quo and the precise nature of the intended change/s, including the effect on all schools which are the subject of the statutory proposal/s involved in its implementation, and all others which are likely to be affected.

This section might also include the following information, as appropriate:

- The expected revisions to the local school data (as set out in the background section above) once the proposals are implemented;
- Implementation dates and details of any transition arrangements;
- Revenue savings/costs;
- Capital funding costs, including the source of any such funding;
- Description of any new accommodation;
- Proposed new admission arrangements;
- Proposed new transport arrangements and the accessibility of alternatives;
- Staffing issues;
- Community Impact Assessment;
- Welsh Language Impact Assessment;
- Equality Impact Assessment;
- Likely benefits to children and young people, in accordance with the seven core aims of the United Nations Convention on the Rights of the Child.

This section might also set out the rationale for change – the inadequacies of the status quo (as well as any strengths it may have) and the benefits that the changes will bring with reference to Section 1 of the Code. If appropriate, the disadvantages of the proposals might also be set out with an explanation of why these disadvantages are outweighed by the benefits. The paramount importance of educational standards **should** be emphasised, and there **should** be direct reference to how the proposal would benefit overall education provision in the locality and address other factors set out in Section 1 of the Code.

Consideration of alternatives, if appropriate, and reasons why these have not been pursued, might also be included in this section.

Explanation of the statutory process

This section might set out the statutory process by which the proposals will be published and approved/determined including the intended date of publication of the notice/s; an explanation of the objection period and the ways in which objections will be treated, and assurance that anyone can object to the proposal.

Response Pro-forma

A response pro-forma for comments, including an opportunity for consultees to register their wish to be notified of publication of the consultation report, **should** be attached to the consultation document.

Annex D: Community impact and Welsh-medium impact assessments

The Welsh Government takes the view that the requirement for assessments should not be overly burdensome and does not consider that it is necessary to commission such work from external consultants. Local authorities are already under a duty to carry out equality impact assessments which could provide the basis for the impact assessments specified in this guidance.

Community Impact

Impact assessments **should** ideally be included in consultation documents. Whilst these notes do not prescribe what should be included in a community impact assessment, proposers might include the following:

- information on the proportion of pupils from the catchment area that attend the school;
- information on the proportion of pupils from outside the catchment area that attend the school;
- information about any other facilities the school accommodates e.g. youth club/play group;
- information about any other facilities or services the school provides e.g. after school clubs, community library;
- if accommodation, facilities or services are provided by a school, where they would be provided in the event of closure;
- whether other facilities available in the immediate local or wider community will or could be enhanced in the event of a school closure (e.g. improvements to village halls, playgrounds, provision of holiday play schemes);
- information about the facilities and services provided at any alternative school;
- information about the distance and travelling time involved in attending an alternative school of the same language category;
- how parents' and pupils' engagement with the alternative school and any facilities it may offer could be supported (e.g. how pupils (and particularly any less advantaged pupils) will be helped to participate in after school activities);
- Information about any wider implications the changes would have on public transport provisions;
- Information on wider community safety issues.

Welsh language Impact

These notes are not prescriptive or exhaustive but the impact assessment in respect of the Welsh language might include the following:

- information on the language category of the school;
- information on the language category of any alternative school;
- information about standards in the Welsh language in the school and any alternative school;
- information about after school activities which provide additional opportunities to use Welsh in the school and any alternative school (e.g. Urdd clubs);
- information about whether the school provides facilities for members of the community to learn Welsh, or undertake activities through the medium of Welsh, and where any alternative facilities could be provided;
- whether it might be appropriate to provide additional after school facilities at any alternative school to further secure standards in the Welsh language;
- how parents' and pupils' engagement with any alternative school and any specific language enhancement it offers could be supported (e.g. how pupils will be helped to participate in Urdd clubs);
- information on how the proposal fits with the authority's Welsh in Education Strategic Plan and any future actions that will be needed in consequence of the change to continue to comply with the scheme or meet targets in the scheme.

Annex E: Local decision making committee

The model set out below represents one potential way of establishing a 'local decision making committee'.

The size of the committee would be significant in shaping its effectiveness. Too large and it would be unwieldy and difficult to establish a consensus. Too small and there might be too little debate and too narrow a perspective. A committee with five members might represent an ideal size.

The make up of the committee will also be important in determining how it is perceived. If the intention is to emphasise its separation from the local authority's executive, it might be necessary to 'disqualify' members of the executive and anyone who has a connection to the local authority, proposer (if different from the local authority) or the school to which the proposals relate, which might raise doubts over their ability to act impartially regarding the proposal.

Providing they are not 'disqualified', local authorities might decide to appoint committees made up of local authority members only, or of persons unconnected with the local authority (including members of another local authority), or of any combination of the two.

Where a school with a designated Church in Wales or Roman Catholic religious character (or which is intended to have such a religious character) is the subject of a proposal, the local authority might invite the Diocesan Board of Education for the relevant diocese of the Church in Wales or the Bishop of the relevant Roman Catholic Church diocese to nominate a representative to be one of the members of the committee. In the case of any other voluntary school with a designated religious character, the person or persons by whom the foundation governors are appointed might be invited to nominate a representative.

Local authorities might want to ensure that at least one member of the committee has direct experience of working in the education sector. An existing or former member of a school's senior management team or an experienced school governor might be suitable in this respect.

In the event that the committee is to be comprised of local authority members only, the local authority might want to consider making it politically balanced in the sense set out at sections 15 and 16 of the Local Government and Housing Act 1989.

The local authority may wish to recruit, train and retain a pool of eligible persons and appoint to a committee as and when required. This would provide a number of advantages including reducing the time needed to set up a committee when required and helping the local authority to ensure potential committee members have sufficient training.

Local authorities could also co-operate to develop shared regional pools. This would increase the potential number of eligible and suitably experienced candidates whilst at the same time providing more opportunities for committee members to gain experience and develop expertise in making school organisation decisions.

However, when appointing panels from any such regional pool, local authorities might want to ensure at least some members have specific local knowledge.

The local authority would want to ensure that all committee members receive appropriate training before considering proposals, and that experienced committee members are kept abreast of any amendments to guidance and are given the opportunity of undertaking refresher training. Training need not be extensive but might look to ensure that committee members are familiar with the guidance contained in the Code and are familiar with the relevant parts of the 2013 Act. Two or more local authorities could collaborate to deliver training which, in addition to possible financial savings, could provide benefits such as the wider sharing of good practice.

It would be advisable for the committee to have the services of a clerk provided by the local authority. Whilst the clerk would not be a member of the committee they might act as an independent source of advice. To enable this, clerks would need a good understanding of the Code and the relevant parts of the 2013 Act and would have received appropriate training. The local authority, where necessary, would need to provide the committee with appropriate legal advice. It would be advisable for the clerk not to have been involved at any stage in the proposal that the committee are considering or to have any interest in any decision reached by the committee members.

The key tasks of the clerk would be to:

- make the necessary administrative arrangements for the committee;
- be an independent source of advice on procedure, the Code and the relevant parts of the 2013 Act;
- record the proceedings, decision and the reasons for it; and
- ensure notification and publication of the decision in accordance with paragraph 5.13.

To enable a committee to reach an informed decision, the local authority would need to forward to the appointed clerk the documents set out paragraph 5.3 above, shortly after the end of the objection period. It would be advisable for the committee to reach its decision on the basis of this written evidence rather than seek or consider new information (unless they consider it will assist in the determination within the timescale), or consider oral representations.

Explanatory Memorandum to the School Organisation Code 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills 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 2013.

LEIGHTON ANDREWS AM
APRIL 2013

1. Description

The School Organisation Code imposes requirements and provides guidance to those persons who will be 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, and from time to time revise, a code on school organisation (*the Code*).

Section 39 of the Act requires that before issuing a Code, the Welsh Minister 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.

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.

It will replace two existing guidance circulars: Circular 9/99 *School Standards and Framework Act 1998 Organisation of School Places*, which describes the procedures for publishing and deciding proposals; and Circular 21/09 *School Organisation Proposals*, which sets out the policy considerations that

proposers need to take into account when developing a proposal and the criteria Welsh Ministers apply in deciding the proposals that they are required to determine.

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 changes introduced by the Act and the Code are intended to speed up the school organisation process and ensure that wherever possible, decisions are taken at the local level. This in turn should enable more rapid progress to be made towards the goal of creating a 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 Act's provisions are expected to apply in relation to proposals published on or after the 1 October 2013. If the Code is not issued in advance of that date, implementation of the Act's provisions will not be possible, and the expected improvements to the current system of school organisation would not be made.

5. Consultation

Public consultation on a draft Code took place for 12 weeks between 24 October 2012 and 16 January 2013. Those consulted included local authorities; school governing bodies; Estyn; the Children's Commissioner; diocesan education authorities; the Welsh Local Government Association; and teaching unions. A Children and Young People's questionnaire about the Code was also produced and distributed.

There was broad support for the draft Code and its contents from a large majority of the respondents, although there were also suggestions for improvement. Many of these suggestions were subsequently incorporated into the draft of the Code which is being laid. A detailed summary of the consultation responses has been published on the Welsh Government's website and can be accessed at [Welsh Government | School Organisation](#)

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.

Nevertheless, consideration has been given to whether the impact of the Code is in any case sufficient to warrant the completion of an RIA. It has been concluded that as the Code does not create additional regulatory or financial burdens, an RIA is unnecessary. Existing legislation requires those

considering bringing forward school organisation proposals to conduct consultation with stakeholders and publish statutory notices, and the Act will continue with that requirement. The Code provides a clear framework within which consultation and publication must take place but does not extend beyond that which is already expected.



Constitutional and Legislative Affairs Committee

Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147)

Briefing

Date of paper:

13 May 2013

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

For further information, contact Owain Roberts in the Research Service
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Research
Service

1. Introduction

The proposal for a regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks ('the proposed regulation') was issued by the European Commission **26 March 2013**.¹ The Assembly subsequently received a copy of the Department for Culture, Media and Sport's Explanatory Memorandum, which set out the UK Government's views of the proposal, on **24 April 2013**. **A copy of the EM is included in full as an annex to this paper.**

2. The proposed regulation

The proposed regulation contains eleven articles which are aimed at **reducing the overall cost of deploying new superfast broadband infrastructure**, primarily through measures intended to reduce the costs of civil engineering works during rollout. The key aims of the proposed regulation fall into four main areas:

- access to existing infrastructure;
- information provision around existing infrastructure;
- co-ordination of street works / permitting; and
- infrastructure in new buildings.

The proposed regulations support the the [Digital Agenda for Europe](#) and the European Commission's main broadband targets of achieving 30 Mbps broadband speeds for 100% of households, and at least 50% of these households subscribing to speeds over 100 Mbps, by 2020.

3. Subsidiarity

The EM states that the UK Government's position in relation to subsidiarity is as follows:

The UK Government has concerns that the Regulation is not justified in accordance with the subsidiarity principle. The measures supported by the Regulation – infrastructure sharing, information provision, street works coordination and in-built broadband equipment in buildings – would all be implemented at a local level. There is little prospect of these measures having a cross-border market effect, as the issues the Regulation seeks to address are not applicable to the core network that crosses Member State borders. **The Government believes that the Regulation's intended aim – to support superfast broadband rollout by lowering the cost of civil engineering works – would be best achieved by action at Member State level [RS emphasis].**²

The EM states that the UK Government's key concern 'is the use of a Regulation as the vehicle to implement these measures' that would 'enforce a prescriptive approach, no

¹ European Commission, [Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks](#), 26 March 2013 [accessed 8 May 2013]

² Department for Media, Culture and Sport, *Explanatory Memorandum on European Union legislation: Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks*, April 2013, paragraph 18

matter what the current policies, regulations and structures are in a particular location'.³
The EM adds that:

Many of the policy objectives behind the Regulation could, in theory, be supported at the EU level if they were proposed in a different way using a different legal instrument.⁴

The EM also states that the language contained in the proposed regulation 'does not provide any certainty on a number of issues, for example broadband infrastructure in new buildings' and that 'Introducing uncertainty into a market where return on investment is already precarious is unlikely to lead to additional investment'.⁵

The eight week deadline for reasoned opinions from national parliaments in relation to the proposed regulation is **31 May 2013**.⁶

To date, no Member State has issued a Reasoned Opinion, however the German state parliaments of **Baden-Württemberg** and **Thüringen** have issued concerns in relation to the proposal.⁷ Both submissions suggest that a directive instead of a regulation would be sufficient in this case and that the proposal does not leave sufficient room for national decisions.

3.1. Views within the UK

Assembly officials understand that the Northern Ireland Assembly and the Scottish Parliament will be looking at whether the proposed directive raises any subsidiarity concerns over the coming weeks.

The House of Commons' **European Scrutiny Committee** considered the proposed regulation at their meeting on 8 May. The proposed regulation is currently being considered in the House of Lords by the European Select Committee's **Sub-Committee B on Internal Market, Infrastructure and Employment**.

The ability of both Committees to incorporate the Assembly's views into a report to inform a possible debate on a Reasoned Opinion however is constrained by the Whitsun recess (which takes place between 21 May and 3 June). As a result, **any correspondence from the Assembly relating to the proposed regulation should be sent well ahead of 21 May, to allow for the Assembly's views to be incorporated into the reports of both Committees.**

³ Department for Media, Culture and Sport, *Explanatory Memorandum on European Union legislation: Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks*, April 2013, paragraph 21

⁴ Ibid, paragraph 19

⁵ Ibid, paragraph 23

⁶ IPEX, [Document COM/2013/147: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures to reduce the cost of deploying high-speed electronic communications networks](#), 26 March 2013 [accessed 7 May 2013]

⁷ Committee of the Regions, Subsidiarity Monitoring Network, [European Commission Document: Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks](#), 26 March 2013 [accessed 9 May 2013]



3.2. Views of the Assembly

Although telecommunications and internet services are reserved matters in Wales, the content of the proposed regulation is of relevance to the Assembly as it relates to **Subject 10: Highways and Transport** of Schedule 7 to the *Government of Wales Act 2006*.⁸ The proposed regulation also impacts on the powers devolved to Welsh Ministers to make **building regulations** from 31 December 2011.⁹ These powers include setting standards for design and construction which apply to most new buildings and many alterations. The EM states that the Welsh Government was consulted by the Department for Culture, Media and Sport in the preparation of the EM.

Under the **Subsidiarity Protocol**, the Committee may raise formal subsidiarity concerns in relation to the proposal on behalf of the Assembly by issuing a written representation to the Commons' European Scrutiny Committee and the Lords' EU Select Committee. Those committees may then take account of such views in reaching their own conclusions on the proposal and in considering whether or not to recommend issuing a written representation.

4. Next steps

On the basis that no objections on the grounds of subsidiarity will be made by the required number of Member States before 31 May 2013, the proposed regulation is expected to be formally discussed at the **Telecoms Council in early June 2013**. The EM states that it is the European Commission's ambition to conclude negotiations by the end of 2013, with the proposed regulation coming into force soon afterwards.

⁸ *Government of Wales Act 2006* (Chapter 32) [accessed 9 May 2013]

⁹ *The Welsh Ministers (Transfer of Functions) (No.2) Order 2009* SI 2009 / 3019 [accessed 9 May 2013]

Annexe A

7999/13
COM (2013) 147 final

EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks

Submitted by the Department for Culture, Media and Sport on April 2013

SUBJECT MATTER

1. The proposed Regulation aims to reduce the overall cost of deploying new superfast broadband infrastructure, primarily through measures intended to reduce the costs of civil engineering works during rollout.
2. The measures in the proposed Regulation include streamlined procedures for applications for permits, and a requirement to make passive infrastructure available for sharing on request. The Commission cites independent estimates that up to 80% of the cost of deploying new superfast broadband networks is rolled up in civil engineering works. The Commission argues that implementing these measures would lead to savings of 20-30% of total investment costs, amounting to up to €63 billion by 2020.
3. The proposal directly supports the Digital Agenda for Europe, and the Commission's two main broadband targets: 30 megabits per second (Mbps) broadband speeds for 100% of households, and at least 50% of these households subscribing to speeds over 100Mbps, both by 2020. The UK supports the Commission's Digital Agenda targets, and the transformation we will see in UK broadband by 2015 (higher speeds, wider penetration, continued choice and competition) will play an important role in achieving them.
4. The key aims of the Regulation broadly fall into four main areas: access to existing infrastructure; information provision around existing infrastructure; co-ordination of street works / permitting; and infrastructure in new buildings.
5. The Regulation contains eleven articles:

Article 1 states the subject matter and scope of the Regulation.

Article 2 defines the terms used.

Article 3 states that any 'network operator' shall be obliged to meet reasonable requests to provide access to its physical infrastructure (e.g. ducts, pipes, overhead lines) to support

deployment of high speed communications infrastructure. The term 'network operator' is very widely framed, and explicitly includes electricity, gas, water, sewage, roads, railways etc. in addition to telecoms. The Article also sets out potential reasons for refusal (suitability, safety) and the proposed dispute resolution process.

Article 4 requires the setting up of a single contact point to provide information on the location, size and ownership of existing infrastructure. It sets out the method by which this information shall be gathered from public bodies and network operators, and the process by which any operator can request information from this central point to inform its network deployment planning.

Article 5 sets out the process by which any civil works partially or fully funded by public money must meet any reasonable request from communications network operators to coordinate their works.

Article 6 states that a single information point for the granting of permits (for example covering street works, planning and environmental permitting) shall be set up, and that communications network operators shall have the right to submit any permit applications to the central point, which would then be responsible for facilitating the granting of the permit.

Article 7 states that all newly constructed buildings and major renovations must be equipped with in-built superfast broadband infrastructure, and that newly constructed multi-dwelling units (i.e. flats or office blocks) must also have a single access point connecting to the in-built infrastructure.

Article 8 states that network providers will have the right to terminate their infrastructure at the access point (Article 7) and then access the in-built network.

Article 9 dictates that the National Regulatory Authority (Ofcom in the UK) will act as the dispute resolution body and single information point mentioned in Articles 3, 4, 5 and 6, unless the Member State designates or sets up another body.

Article 10 pledges to report to the European Parliament and Council on the Regulation's implementation.

Article 11 states when the Regulation shall come into force, and that it shall be binding in all Member States.

6. The Commission's impact assessment discusses a number of options:
 - i. Maintaining business as usual
 - ii. Promoting efficiency gains via guidance and recommended measures
 - iii. A Regulation to implement the policy
 - iv. A combination of a Regulation and a Recommendation to the implement the policy
 - v. Legislation to complement the existing regulatory framework and mandate further measures

After analysis in the impact assessment, the Commission has chosen option iii, arguing that it is best placed to deliver a comprehensive solution across different Member States relatively quickly.

SCRUTINY HISTORY

7. The proposed Regulation was formally proposed on 27 March 2013, so this is the first occasion it has been subject to scrutiny by Parliament.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for Culture, Media and Sport has primary responsibility for UK telecommunications policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. Policy on telecommunications and broadband is a reserved matter under the UK's devolution settlements. However, Ministers from the Scottish Government, Welsh Government and Northern Ireland Executive will also have an interest as the proposed Regulation would also affect a number of devolved policy areas, such as roads and street works. The devolved administrations have been consulted in the preparation of the EM.

LEGAL AND PROCEDURAL ISSUES

10. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, with its objectives seeking to improve the conditions for the establishment and functioning of the internal market.

11. Legislative procedure

Ordinary legislative procedure.

12. Voting procedure

Qualified Majority Voting.

13. Impact on United Kingdom Law (including implementation issues)

Regulations are directly applicable in UK law. However, it will be necessary to give effect to the Regulation by establishing the principles to which Regulators should have regard when considering applications. It may be necessary to grant new powers to regulators and to create penalties for non-compliance.

14. Application to Gibraltar

The Regulation will apply to Gibraltar.

15. Fundamental Rights Analysis

Article 1 of Protocol 1 will be engaged as the protection it affords extends to businesses as well as individuals. The Regulators implementing the Directive would

need to take care that compensation is appropriate and set at the correct level.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

16. As a proposal with an Article 114 legal base, it is likely to be adopted throughout the European Economic Area.

SUBSIDIARITY

17. The Commission assesses that the proposed Regulation is justified by the subsidiarity principle, and that the measures it will put in place are necessary at European Union level. It cites the different rules, procedures and regulatory regimes currently governing broadband infrastructure deployment in different Member States as a barrier to rollout and the effective functioning of the Single Market.

18. The UK Government has concerns that the Regulation is not justified in accordance with the subsidiarity principle. The measures supported by the Regulation – infrastructure sharing, information provision, street works coordination and in-built broadband equipment in buildings – would all be implemented at a local level. There is little prospect of these measures having a cross-border market effect, as the issues the Regulation seeks to address are not applicable to the core network that crosses Member State borders. The Government believes that the Regulation's intended aim – to support superfast broadband rollout by lowering the cost of civil engineering works – would be best achieved by action at Member State level.

POLICY IMPLICATIONS

19. The Government is committed to achieving the European Digital Agenda targets on broadband, and is supportive of measures at different levels which streamline and lower the cost of superfast broadband deployment. The Government is currently implementing a package of measures in the UK to sweep away red tape around planning, street works, access to land, and power supplies. The proposed Regulation does, in fact, contain a number of elements that reflect current UK priorities to promote broadband rollout, for example encouraging infrastructure sharing between telecoms providers and electricity suppliers, and streamlining the permit scheme process when carrying out street works. Many of the policy objectives behind the Regulation could, in theory, be supported at the EU level if they were proposed in a different way using a different legal instrument.

20. We are, however, concerned that the proposed Regulation will not achieve its goals to lower the cost of civil engineering works, but instead place burdens on business, government and regulators, and potentially stifle progress while it is being implemented.

21. Our key concern is the use of a Regulation as the vehicle to implement these measures. The Regulation would be applicable in all Member States and would

enforce a prescriptive approach, no matter what the current policies, regulations and structures are in a particular location. On infrastructure sharing, for example, network operators would be required, not just encouraged, to meet requests from telecoms providers to provide access to their infrastructure. In addition, there is a risk that mandated infrastructure sharing underpinned by law could in fact act as a disincentive to network investment in the most hard-to-reach areas – precisely the places currently lacking in superfast broadband access – because of the risk of ‘free riding’ on existing infrastructure.

22. The Government also has concerns regarding some of the specific policy proposals, particularly around the effect of the measures on wayleaves – the payments made by utilities companies to landowners to install and maintain equipment on private property. The wayleave regimes in the UK for communications and electricity, for example, are different to some other European countries where landowners do not enjoy rights of compensation for allowing infrastructure. It is unclear how this issue would be resolved if sharing were mandated, without major legislative changes to the regime for electric line wayleaves and the likely increase in burdens on the public and private sectors. Issues around wayleaves and private property rights would also arise when implementing the plans for in-built broadband infrastructure in new buildings.

23. While the current drafting of the Regulation advocates a commercially-led approach, the language does not provide any certainty on a number of issues, for example broadband infrastructure in new buildings. Introducing uncertainty into a market where return on investment is already precarious is unlikely to lead to additional investment.

IMPACT ASSESSMENT

24. The Commission has produced a detailed impact assessment alongside the proposed Regulation. The impact assessment estimates that savings of 20-30% on the civil engineering costs of superfast broadband deployment could be achieved by adopting the measures proposed in the Regulation.

25. Specifically, the impact assessment identifies for the proposed policy option (see paragraph 6 above) significant capital savings for communications providers thanks to infrastructure sharing, co-deployment and faster rollout. It also cites the potential additional revenues for network operators who share their infrastructure, arguing that this would outweigh costs.

26. The Commission’s estimate is predicated on assumptions about the level of network deployment that would occur in shared passive infrastructure – namely that 25% of new deployment would occur in shared infrastructure and that 75% of the civil engineering costs would be saved. We will need to understand these assumptions better and in more detail.

27. The Government feels that, while infrastructure sharing could potentially lead to some capital expenditure savings, the impact assessment does not fully take into account the knock-on effects of the measure. On the issue of implementation and administrative costs incurred by Member States, for example, the impact assessment acknowledges that they are difficult to quantify and would vary significantly between different Member States; however, it then argues that the costs would be outweighed by the wider capital savings and potential synergies. We will need to understand in more detail what these administrative costs will be and to what extent they would be one off setup costs, in both the UK and in other Member States.
28. The Regulation would require all telecoms companies to make their passive infrastructure available for sharing on request. Ofcom already has the power to require passive infrastructure sharing on specific request, but subject to a proportionality test – i.e. whether the request is objectively justified and would not distort competition. The new Regulation reverses this presumption, in that small telecoms providers would be required to open their infrastructure to larger competitors. Under the Regulation, adverse effect on competition would not be a permitted ground for refused access.
29. Other impacts would include increased wayleave payments imposed on network operators whose infrastructure becomes shared by telecoms providers (paragraph 22 above), and the additional burdens around providing network information to the single point of contact in Article 4.
30. There is also a risk that co-operation and investment in broadband infrastructure would stall while the legal instrument was being drafted, and that the measures could ultimately disincentivise investment in the hardest to reach areas.
31. We have not, as yet, been able canvass the views of the various industries – gas, electricity, water etc. – who would be affected by the Regulation, but we will be seeking their views. When the Government consulted on infrastructure sharing in 2010, industry concerns included responsibility for installation and maintenance, and liability.

FINANCIAL IMPLICATIONS

32. The proposal notes that the Regulation would have no impact on the Commission's budget. However, the impact assessment does identify significant costs. In addition to the possible burdens on business outlined above, the measures would also have a financial effect on individual Member States and their national regulatory authorities. In the vast majority of Member States, a new body to oversee dispute resolution and set up and manage the single point of contact for information provision would have to be created, or an existing body (like the national telecoms



regulator) greatly expanded. The setup and running costs for such a body could be significant for individual Member States.

CONSULTATION

33. The Commission did consult last year on a series of measures to reduce the cost of communications infrastructure deployment, but not on a proposed Regulation.

TIMETABLE

34. The proposal is expected to be formally discussed at the Telecoms Council in early June, with the Commission's ambition to conclude negotiations by the end of 2013 and the Regulation to come into force soon afterwards.

Ed Vaizey MP
Minister for Culture, Communications and Creative Industries
Department for Culture, Media and Sport



Member of the European Parliament

Mr David Melding AM,
Chair of the Constitutional and Legislative Affairs Committee,
National Assembly for Wales

3rd May 2013

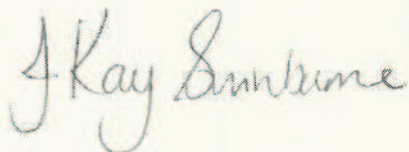
Dear Mr Melding,

Thank you very much for your letter dated 20 March 2013, regarding the Constitutional and Legislative Affairs Committee's consideration of the European Commission's proposal for a Directive on the Deployment of Alternative Fuels Infrastructure (COM(2013)0018).

I was pleased to receive the comments from your Committee on this proposal and I will share your Committee's views with my colleague Mr Peter van Dalen MEP who is the European Conservatives and Reformists Shadow Rapporteur following this proposal in the European Parliament's Transport and Tourism Committee.

Thank you for writing to me on this issue.

Yours sincerely



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**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Ms Kay Swinburne MEP
European Parliament
Rue Wiertz
Altiero Spinelli 04F247
B-1047 Bruxelles

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



20 March 2013

Dear Ms Swinburne

Proposal for a directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure (COM(2013)0018)

The Constitutional and Legislative Affairs Committee considered the European Commission's above proposal for a directive on the deployment of an alternative fuels infrastructure at its meeting on 18 March 2013.

In doing so, the Committee acknowledged that the House of Commons' European Scrutiny Committee has already recommended that the provisions contained in the proposed directive do not warrant the House issuing a Reasoned Opinion on this occasion.

We note however that the UK Government Department for Transport's EM on the proposed directive states the following in relation to subsidiarity:

The Government accepts that in matters such as common standards for alternative fuels infrastructure, action at an EU level will be required to ensure market harmonisation and acceptance of refuelling equipments by road users across the EU.

However the Government does not agree that the principle of subsidiarity is being respected in all areas of this proposal. We are of the view that the setting of targets within individual Member States is a matter for national policymakers to decide. They know best the market situation within their territory and should be free to implement

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those measures necessary to deliver the desired outcomes in the most cost-effective manner without the need to set mandatory targets.¹

We share these concerns and wish to draw them to your attention. In particular, we believe that Member States and devolved institutions have a better knowledge of their own market requirements in this area and are therefore in a better position to set targets.

We would be grateful therefore if you could note the Committee's views as part of the European Parliament's future consideration of the Commission's proposal.

I am copying this letter to William Cash MP, Chair of the European Scrutiny Committee in the House of Commons.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Melding AM
Chair

¹ Department for Transport, *Explanatory Memorandum: Proposal for a Directive of the European Parliament and of the Council on the Deployment of Alternative Fuels Infrastructure (COM(2013)0018)*, 15 February 2013, Paragraphs 21 and 22

By virtue of paragraph(s) vi of Standing Order 17.42

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