



# School Standards and Organisation (Wales) Act 2013

2013 anaw 1

## PART 3

### SCHOOL ORGANISATION

#### CHAPTER 2

##### SCHOOL ORGANISATION PROPOSALS

*Establishment, alteration and discontinuance of maintained schools*

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

- (1) A new community school, voluntary school or community special school may be established in Wales only in accordance with this Part.
- (2) No new foundation school or foundation special school may be established in Wales.
- (3) A maintained school may be discontinued only in accordance with this Part.
- (4) An alteration which is a regulated alteration in relation to the type of school in question may be made to a maintained school only in accordance with this Part.
- (5) No alteration may be made to a maintained school that changes the religious character of the school or causes a school to acquire or lose a religious character.
- (6) Subsection (3) has effect subject to section 16(5) (power of Welsh Ministers to direct closure of school).
- (7) Schedule 2 (which describes regulated alterations) has effect.

**41 Proposals to establish mainstream schools**

- (1) A local authority may make proposals to establish—
  - (a) a new community school, or
  - (b) a new maintained nursery school.
- (2) Any person may make proposals to establish a new voluntary school.

**42 Proposals to alter mainstream schools**

- (1) A local authority may make proposals—
  - (a) to make a regulated alteration to a community school;
  - (b) with the consent of the Welsh Ministers, to make an alteration described in paragraph 6 of Schedule 2 (opening or closing a school's sixth form) to a voluntary or foundation school;
  - (c) to make an alteration described in paragraph 10, 11, 12 or 13 of Schedule 2 (increasing and reducing capacity) to a voluntary or foundation school if that school does not have a religious character;
  - (d) to make a regulated alteration to a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to make a regulated alteration to the school.

**43 Proposals to discontinue mainstream schools**

- (1) A local authority may make proposals to discontinue—
  - (a) a community, foundation or voluntary school, or
  - (b) a maintained nursery school.
- (2) The governing body of a foundation or voluntary school may make proposals to discontinue the school.

**44 Proposals to establish, alter or discontinue community special schools**

- A local authority may make proposals—
- (a) to establish a new community special school,
  - (b) to make a regulated alteration to such a school, or
  - (c) to discontinue such a school.

*Changes of category***45 Proposals to change a school's category**

- (1) The governing body of a community school may make proposals for the school to become a voluntary aided school or a voluntary controlled school.
- (2) The governing body of a voluntary aided school may make proposals for the school to become a community school or a voluntary controlled school (but see subsection (5)).
- (3) The governing body of a voluntary controlled school may make proposals for the school to become a community school or a voluntary aided school (but see subsection (5)).

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- (4) The governing body of a foundation school may make proposals for the school to become a community school, a voluntary aided school or a voluntary controlled school (but see subsection (5)).
- (5) No proposals may be made for a foundation or voluntary school which has a religious character to become a community school.

#### **46 Restrictions on changing category of school**

- (1) A maintained school within one of the categories set out in section 20(1) of the School Standards and Framework Act 1998 may become a school within another of those categories (except a foundation school or foundation special school) only in accordance with this Part.
- (2) A school may not change category to become a voluntary aided school unless the governing body of the school satisfies the Welsh Ministers that it will be able to carry out its obligations under Schedule 3 to the School Standards and Framework Act 1998 (funding of voluntary aided schools) for a period of at least five years following the date on which it is proposed that the change of category is to take place.
- (3) A voluntary or foundation school may not become a community school unless any transfer agreement and transfer of rights and liabilities agreement required by Part 3 of Schedule 4 has been entered into.

#### **47 Effect of change of category**

- (1) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising or requiring any change in the character of the school (including, in particular, any religious character of the school).
- (2) A school's change of category in accordance with proposals made under section 45 is not to be taken as authorising a school to establish, join or leave a foundation body.

#### *Publication, consultation and objections*

#### **48 Publication and consultation**

- (1) A proposer must publish proposals made under this Chapter in accordance with the Code.
- (2) Before publishing proposals made under this Chapter, a proposer must consult on its proposals in accordance with the Code.
- (3) The requirement to consult does not apply to proposals to discontinue a school which is a small school (see section 56).
- (4) Before the end of 7 days beginning with the day on which they were published, the proposer must send copies of the published proposals to—
  - (a) the Welsh Ministers, and
  - (b) the local authority (if it is not the proposer) that maintains, or that it is proposed will maintain, the school to which the proposals relate.

- (5) The proposer must publish a report on the consultation it has carried out in accordance with the Code.

#### **49 Objections**

- (1) Any person may object to proposals published under section 48.
- (2) Objections must be sent in writing to the proposer before the end of 28 days beginning with the day on which the proposals were published (“the objection period”).
- (3) The proposer must publish a summary of all objections made in accordance with subsection (2) (and not withdrawn) and its response to those objections—
- (a) in the case of a local authority that is required to determine its own proposals under section 53, before the end of 7 days beginning with the day of its determination under section 53(1), and
  - (b) in all other cases, before the end of 28 days beginning with the end of the objection period.

#### *Approval and determination of proposals*

#### **50 Approval by Welsh Ministers**

- (1) Proposals published under section 48 require approval under this section 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 in accordance with section 49(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.
- (2) 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.
- (3) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (4) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.
- (4) The documents are—
- (a) the report published under section 48(5),
  - (b) the published proposals,
  - (c) any objections made in accordance with section 49(2) (and not withdrawn), and
  - (d) where objections have been so made (and not withdrawn), the response published under section 49(3).
- (5) Where proposals require approval under this section, the Welsh Ministers may—
- (a) reject the proposals,
  - (b) approve them without modification, or

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- (c) approve them with modifications—
  - (i) after obtaining the consent of the proposer to the modifications, and
  - (ii) (except where the governing body or local authority, as the case may be, is the proposer), after consulting the governing body (if any) of the school to which the proposals relate and the relevant local authority.
- (6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (7) The Welsh Ministers may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.
- (8) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the Welsh Ministers at any time before they are approved under this section.
- (9) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56).
- (10) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.

## **51 Approval by local authority**

- (1) Proposals published under section 48 require approval under this section if—
  - (a) they do not require approval under section 50,
  - (b) they have been made by a proposer other than the relevant local authority, and
  - (c) an objection to the proposals has been made in accordance with section 49(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.
- (2) Where proposals require approval under this section, the proposer must send a copy of the documents listed in subsection (3) to the relevant local authority before the end of 35 days beginning with the end of the objection period.
- (3) The documents are—
  - (a) the report published under section 48(5),
  - (b) the published proposals,
  - (c) objections made in accordance with section 49(2) (and not withdrawn), and
  - (d) the response published under section 49(3).
- (4) Where proposals require approval under this section, the relevant local authority may—
  - (a) reject the proposals,
  - (b) approve them without modification, or
  - (c) approve them with any of the modifications specified in subsection (5)—
    - (i) after obtaining the consent of the Welsh Ministers and the proposer to the modifications, and
    - (ii) (except where the governing body is the proposer) after consulting the governing body (if any) of the school to which the proposals relate.
- (5) The relevant local authority may modify—

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- (a) the date or dates specified in the published proposals as the date or dates on which the proposals are planned to be implemented;
  - (b) the number of pupils specified in the published proposals as the number to be admitted to the school (in any age group and in any school year).
- (6) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (7) The relevant local authority may, at the request of the proposer, specify a later date by which the event referred to in subsection (6) is to occur.
- (8) The relevant local authority must make a determination under subsection (4) whether to reject or approve the proposals before the end of 16 weeks beginning with the end of the objection period.
- (9) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the proposer to the relevant local authority at any time before they are approved under this section.
- (10) No approval is required under this section for proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56).
- (11) In this section “relevant local authority” means the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate.

## **52 Related proposals**

- (1) A proposer must send to the Welsh Ministers proposals (“proposals B”) it has made if—
- (a) it considers that they are related to proposals requiring approval under section 50 (“proposals A”), and
  - (b) the proposer has not determined whether to implement proposals B under section 53 before the Welsh Ministers approve or reject proposals A.
- (2) If the Welsh Ministers consider that proposals B are related to proposals A, proposals B are to be treated as requiring approval under section 50.
- (3) A proposer must send to a local authority proposals (“proposals D”) it has made if—
- (a) it considers that they are related to proposals requiring the local authority's approval under section 51 (“proposals C”), and
  - (b) the proposer has not determined whether to implement proposals D under section 53 before the local authority approves or rejects proposals C.
- (4) If the local authority considers that proposals D are related to proposals C, proposals D are to be treated as requiring approval under section 51.
- (5) The Welsh Ministers may require any other proposals to be treated as requiring approval under section 50 if—
- (a) they consider that they are related to proposals requiring their approval under section 50, and
  - (b) the proposer has not determined whether to implement them under section 53 before the Welsh Ministers approve or reject the proposals requiring approval.
- (6) A local authority may require any other proposals to be treated as requiring approval under section 51 if—

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- (a) it considers that they are related to proposals requiring its approval under section 51, and
  - (b) the proposer has not determined whether to implement them under section 53 before the local authority approves or rejects the proposals requiring approval.
- (7) This section does not apply to proposals referred to a local inquiry under section 61 (local inquiry into proposals for the rationalisation of school places).

### **53 Determination**

- (1) Where any proposals published under section 48 do not require approval under section 50 or 51, the proposer must determine whether the proposals should be implemented.
- (2) If a determination under subsection (1) is not made before the end of 16 weeks beginning with the end of the objection period, the proposer is to be taken to have withdrawn the proposals.
- (3) Before the end of 7 days beginning with the day of its determination under subsection (1), the proposer must notify the following of the determination—
- (a) the Welsh Ministers;
  - (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;
  - (c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.

### **54 Referral to the Welsh Ministers**

- (1) This section applies if a local authority has—
- (a) determined to approve or reject proposals under section 51(4), or
  - (b) determined under section 53(1) to implement proposals to which there was an objection made in accordance with section 49 (and which was not withdrawn in writing before the end of 28 days beginning with the end of the objection period).
- (2) Before the end of 28 days beginning with the day of the local authority's determination under section 51(4) or 53(1), the following may refer the proposals to the Welsh Minister—
- (a) another local authority which is likely to be affected by the proposals;
  - (b) a local authority in England which is likely to be affected by the proposals ;
  - (c) the appropriate religious body for—
    - (i) the school to which the proposals relate if it is, or is intended to be, a school which has a religious character, or
    - (ii) any other school which has a religious character and which is likely to be affected by the proposals;
  - (d) if the school to which the proposals relate is a foundation or voluntary school, the governing body of the school;
  - (e) a trust holding property for the purpose of the school to which the proposals relate;
  - (f) an institution within the further education sector which is likely to be affected by the proposals.

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- (3) Whether an authority, school or institution is likely to be affected by the proposals for the purpose of subsection (2) is a question to be determined by the Welsh Ministers.
- (4) The Welsh Ministers must consider proposals referred to them under this section afresh and subsections (5) to (8) of section 50 apply as if the proposals required their approval under that section.
- (5) Proposals made under section 43 or 44 to discontinue a school which is a small school (see section 56) may not be referred to the Welsh Ministers under this section.
- (6) Proposals which the Welsh Ministers are required to consider under this section are not to be treated for the purposes of section 55 or 61 as proposals approved under section 51 or as proposals that the proposer has determined to implement under section 53.
- (7) Proposals approved in accordance with this section are to be treated for the purposes of section 55 as proposals approved under section 50.
- (8) Proposals rejected in accordance with this section are to be treated for the purposes of paragraph 35(3)(e) of Schedule 4 as proposals rejected under section 50.

## **55 Implementation**

- (1) This section applies to—
  - (a) proposals approved under section 50 or 51, or
  - (b) proposals which the proposer has determined under section 53 to implement.
- (2) The proposals must (subject to the following provisions of this section) be implemented in the form in which they were approved or determined to be implemented—
  - (a) in the case of proposals made under section 41, 42, 43 or 44 (establishment, alteration or discontinuance of schools), in accordance with Schedule 3;
  - (b) in the case of proposals made under section 45 (change of category), in accordance with Schedule 4.
- (3) The proposer may (subject to subsection (6)) determine to delay implementation for a period of up to three years from the date or dates specified in the proposals (as approved or determined) as the date or dates on which they are to be implemented, if it is satisfied—
  - (a) that implementation of the proposals on that date or those dates would be unreasonably difficult, or
  - (b) that circumstances have so altered since the proposals were approved under section 50 or 51 or determined under section 53, that implementation of the proposals on that date or those dates would be inappropriate.
- (4) In the case of proposals to discontinue a school made under section 43 or 44, the proposer may (subject to subsection (6)) determine to bring forward implementation by a period of up to 13 weeks from the date or dates specified in the proposals (as approved or determined) as the date or dates on which they are to be implemented.
- (5) The proposer may (subject to subsection (6)) determine that subsection (2) does not apply to proposals if it is satisfied—
  - (a) that implementation of the proposals would be unreasonably difficult, or

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- (b) that circumstances have so altered since the proposals were approved under section 50 or 51 or determined under section 53, that implementation of the proposals would be inappropriate.
- (6) In the case of proposals which have been approved under section 50 or 51, the proposer may only make a determination under subsection (3), (4) or (5) with the agreement of the Welsh Ministers.
- (7) Before the end of 7 days beginning with the day of the determination, the proposer must notify the following of any determination it makes under subsection (3), (4) or (5)—
- (a) the Welsh Ministers;
  - (b) (except where it is the proposer) the local authority that maintains, or that it is proposed will maintain the school to which the proposals relate;
  - (c) (except where it is the proposer) the governing body (if any) of the school to which the proposals relate.
- (8) Where, by virtue of subsection (5), subsection (2) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected under section 50(5)(a) or 51(4)(a) or as if the proposer had determined under section 53 not to implement them.

## **56 Interpretation of Chapter 2**

- (1) In this Chapter—

“the Code” (“*y Cod*”) means the code on school organisation issued under section 38(1);

“objection period” (“*cyfnod gwrthwynebu*”) has the meaning given by section 49(2);

“proposer” (“*cynigydd*”), in relation to proposals made under section 41, 42, 43, 44 or 45, is the local authority, the governing body or other person who has made the proposals;

“regulated alteration” (“*newid rheoleiddiedig*”) means an alteration described in Schedule 2;

“small school” (“*ysgol fach*”) means 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.

- (2) The Welsh Ministers may by order amend the definition of “small school” in subsection (1) so as to substitute a reference to a different date for the reference to the date for the time being specified.