

Table of changes made to the School Organisation Code issued in 2018

This annex is provided to help the reader to clearly see the changes made to the Code since its last publication in 2018. Given the number of changes which are grammatical in nature, this table is provided in English only.

Throughout the Code
<p>All paragraphs have been numbered for ease of reference. Wherever possible numbered lists have been replaced by bullet pointed lists for consistency.</p> <p>Numbers used within the body of the Code are now shown in numerals throughout.</p> <p>Additional footnotes have been provided throughout the Code to signpost legislation and key policy documents.</p> <p>All references to special educational needs (“SEN”) and special educational provision (“SEP”) have been amended to include additional learning needs (“ALN”) and additional learning provision (“ALP”) respectively to reflect new ALN legislation.</p> <p>References to ‘affected schools’, ‘schools likely to be affected’, ‘schools involved’ ‘alternative provision’ or ‘alternative school-based provision’ now read as either school(s) which are subject to the proposals, other schools or education institutions the proposer considers are likely to be affected by proposals, or alternative schools or other educational institutions, as appropriate for clarity and consistency.</p> <p>The majority of references to ‘pupils’ have been amended to ‘learners’ to provide consistency and reflect sixth form learners.</p> <p>The list of relevant bodies has been extended to include the Commission for Tertiary Education and Research (“the Commission”) in accordance with the amendment made to the 2013 Act by the 2022 Act.</p> <p>References to Information document No: 023/2007 ‘<i>Defining schools according to Welsh medium provision</i>’ has been updated to reference successor document: ‘<i>Welsh Government guidance on school categories according to Welsh-medium provision</i>’.</p> <p>References to the 21st Century Schools Investment Programme have been updated to the Sustainable Communities for Learning Programme.</p> <p>A universal updated consultee list in section 3 of the Code replaces consultee lists which were previously included in several places within the 2018 Code and is signposted.</p> <p>The Code has been amended where necessary to make clear that requirements and guidance in the Code apply to those who approve proposals as well as those who determine them.</p>
Back of front cover
<p>Audience and Overview has been amended to include the Commission for Tertiary Education and Research (‘the Commission’) as one of the relevant bodies that must act in accordance with the Code.</p>

Further information & related documents have been updated.

Contents page

(Amended to reflect changes made to the 2018 Code)

Summary

New heading '**Summary of changes in the draft third edition of the Code**' added and a list of changes arising from legislation provided.

Previous 'Summary' on pages 3 and 4 of the 2018 Code now split into Legislative background and Summary.

Second and fourth paragraphs under summary on page 3 of the 2018 Code amended to reflect Section 38 of the 2013 Act more closely, to include the Commission as a relevant body, and to include coming into force date.

Number 1 of the numbered list reminds readers that failure by a relevant body to comply with the requirements set out in the Code may result in decisions being quashed by the Administrative Court in judicial review proceedings. Also advises that where a mandatory requirement derives from legislation, the relevant statutory provision is provided either in the text or as a footnote. Readers are also reminded that where guidance is given by the Code relevant bodies **should** follow this guidance unless they have clear reasons to depart from it. If relevant bodies do depart from the guidance given in the Code, they **should** give clear reasons for doing so.

Number 3 of the numbered list reminds readers that relevant bodies are to read the Code together with the 2013 Act.

Reference to 'introduction' of presumption against closure of rural schools removed as this is now well established and set out in full at paragraphs 1.28 to 1.43 of the revised Code.

Section 1: Development and consideration of proposals

Key background principles and policies

Second paragraph - reference to the Welsh Government's National Mission added.

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

Penultimate line 'or' approving/determining changed to 'and' approving/determining

Quality and Standards in Education

Reference to 'Her Majesty's Chief Inspector of Education and Training in Wales' changed to His Majesty's Chief Inspector of Education and Training in Wales' and the five inspection areas updated to reflect Estyn's Common Inspection Framework 2022.

Second paragraph updated to reflect the new Curriculum for Wales, removing references to foundation phase and key stages and reflecting legal requirements on the headteacher and governing body for curriculum for learners across the 3-16 continuum of education.

New third paragraph added to reflect the need for consideration of the role of the Commission in respect of proposals which affect schools with sixth form provision.

Last paragraph amended to add area inspections to the list of evidence proposers should consider when assessing the impact of proposals on quality and standards in education; to reflect requirements in respect of the Curriculum for Wales and to make clear that this extends to other education institutions as well as schools.

New sub-section added – Impact on the Welsh language

The requirement for a Welsh Language Impact Assessment to be undertaken for all proposals has been added to meet the requirements of Schedule 2 of the Welsh Language Standards (No 1.) Regulations 2015. Annex C is signposted and must be followed. Bullet points in respect of WESPs which were previously found under section 'Need for Places and Impact on accessibility of schools' has been moved here.

Need for places and the impact on accessibility of schools

First paragraph, third sentence - The Commission has been included as a relevant partner with whom local authorities **must** engage in respect of post-16 provision. Last sentence 'the' removed before 'light'. Second paragraph becomes part of the first paragraph.

Third paragraph added 'removal of school sixth form' after 'sixth form closure'.

Third paragraph, first bullet point - reference to 'alternative school-based provision' amended to 'alternative school-based or post-16 provision' to make clear that in assessing whether alternative provision has sufficient capacity and is of at least equivalent quality applies to removal of school sixth forms as well as school closures.

Fourth paragraph - The list of documents to which relevant bodies should have regard *in considering whether alternative school-based provision will have sufficient capacity and provide accommodation of at least equivalent quality* has been extended to include Sustainable Communities for Learning Business Case Guidance and Welsh Government spatial standards. Also clarified to make clear that the standards for school premises set out in the Education (School Premises) Regulations 1999 '**must**' rather than '**should**' be met.

Fourth paragraph, first bullet point 'which are' added before 'subject' and (a) – updated to make reference to Welsh Government's "Guidance on school categories according to Welsh-medium provision" and background on how this fits with the Curriculum for Wales and Cymraeg 2050 provided.

Fifth paragraph commencing 'Proposals should ensure that the balance of school provision reflects the balance of demand ...' removed to reflect Welsh Language requirements.

New paragraphs 1.14 to 1.18 added regarding school transport.

Fifth paragraph amended 'in the case of proposed school closures' to 'in the case of school closures/sixth form closures'.

Ninth paragraph, added sixth form removals after 'school closures'.

Ninth paragraph, first bullet point removed '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 with 'to support legislative requirements as set out in the Learner Travel (Wales) Measure 2008 which requires local authorities to assess travel needs of all learners'.

Tenth paragraph, where a new school, increase in capacity or age range expansion is proposed: removed first bullet point '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 or religious character, and the gender intake (i.e. co-

educational/single sex). Not needed as the subsequent paragraph states that the demand for additional provision of any type in an area should be assessed and evidenced.

Tenth paragraph, second bullet point - 'Whether proposals will improve access for disabled pupils in accordance with requirements under the Equality Act 2010' amended to 'whether proposals will improve access for disabled learners in accordance with the requirements of section 88 and Schedule 10 of the Equality Act 2010 and Welsh Government Guidance Document – Planning to increase access to schools for disabled pupils dated March 2018'.

Tenth paragraph new third bullet point 'the transport implications for learners, staff and visitors and the need to maximise opportunities to travel by walking, cycling or other sustainable modes, for environmental, societal and health benefits.'

Resourcing of education and other financial implications

First bullet point replaced 'What' with 'The' in 'What effect proposals will have on surplus places in the area.

Fourth bullet point - Removed 'for example clustering, collaboration or federation with other schools' and signposted the relevant sections of the code which set out alternatives to closure.

Added 'in line with their WESP to the end of paragraph *It **should not normally be necessary to provide additional places at schools when there are others of the same type with surplus places within a reasonable distance. However, proposals to increase the number of places 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.***

Added a new bullet point under Relevant bodies should also take into account the following factors in relation to finance:

- whether proposals form part of the local authority's Sustainable Communities for Learning Investment Programme and contribute to the delivery of sustainable schools and to the better strategic management of the school estate. Relevant bodies **should** also take into account the following factors in relation to finance:

Added 'and associated statutory guidance' after 'the *Learner Travel (Wales) Measure 2008*'.

Added new bullet point: 'The revenue costs of the proposal, including staffing and building maintenance costs and whether the necessary revenue funding is available' added.
Typo corrected 's' removed from schools estate.

Other general factors

First bullet point: Reference to 'children from economically deprived backgrounds' changed to 'learners from economically disadvantaged backgrounds'.

Explanatory note under third bullet point: amended to clarify that the Welsh Ministers are the principal regulator of further education corporations and sixth form college corporations which are charities. Sections 22A and 33M of the Further and Higher Education Act 1992 footnoted.

Final paragraph in respect of Welsh Ministers discretionary power to order modification of trust deeds amended to clarify the expectation that proposers 'seek advice' from the Charity Community Commission first.

Added to last paragraph Before making an order, the Welsh Ministers must consult the governing body of the school, any trustees holding property on trust for the purposes of the school; in the case of a Church of England, Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and any other persons they consider appropriate.

Specific factors in consideration of school closures

Second paragraph amended to clarify that those bringing forward proposals involving school closures '**must**' rather than '**should**' undertake a Community Impact Assessment as already reflected on page 13 of the 2018 Code. Signposted annex C to the Code. Expanded on first three bullet points alternatives to closure. Last two bullet points are not alternatives to closure and can be found in the guidance on community impact assessments at annex C.

Presumption against the closure of rural schools

First paragraph - replaced 'This second edition of the Code makes special arrangements in regard to rural schools establishing a procedural presumption against their closure' with 'The Code makes special arrangements in regard to rural schools in respect of a procedural presumption against their closure.'

Specific further steps required to be taken by the proposer in formulating a rural school proposal – 'the proposer is required to follow the further steps below where the proposal relates to the possible closure of a rural school' has been amended to 'The proposer **must** follow the further steps below where the proposal relates to the possible closure of a rural school'.

Formulating the proposal second sentence – replaced 'The proposer 'is required to ...' to 'the proposer '**must**' consider these reasons when making their decision on a proposal or any reasonable alternatives ...'

Identifying reasonable alternatives – Amended the examples of alternatives to closure that might merit consideration as follows:

First bullet point – 'taking account of the scope for use of ICT links between school sites has been removed given wide availability of HWB.

Second bullet point - Play facilities added.

Third bullet point: typo corrected 'is' changed to 'it, and new Community focussed schools' guidance signposted'.

Quality and Standards in Education amended to lower case here and throughout.

Preparing a proposal for the decision maker

Typo amended 'determine' changed to 'determines'.

Amended to make clear that proposers **must** (rather than **should** take into account the factors in Section 1 of the Code when developing and considering proposals.

Added: See also Sections 3, 4, 5 and 6 for requirements that apply in respect of consultation, publication, determination, and implementation of statutory proposals relating to schools designated as rural.

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

Removed third bullet point – the levels of demand for certain types of nursery education e.g. Welsh-medium or provision with a religious character.

Fifth bullet point – changed ‘early years’ education’ to ‘nursery’ education’.

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

First bullet point - ‘and how’ added after whether i.e. ‘whether ‘and how’ 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’.

Second bullet point - ‘ and how’ ‘added after ‘whether’ and legislation updated in relation to relevant courses and qualifications i.e. whether ‘and how’ proposals will contribute to the availability of an appropriate and broad range of relevant courses and qualifications and high quality, employer informed, vocational learning routes targeted at learners of all abilities, whilst maintaining GCSE, AS/A level and other established courses, as required under the 2021 Act and section 33A-Q of the Learning and Skills Act 2000 to support 14-19-year-old learners;

Third bullet point: ‘retention and’ added before ‘increased participation in learning by learners beyond compulsory school age, i.e. ‘whether proposals are likely to lead to retention ‘and increased participation’ in learning by learners 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’.

New fourth bullet point: ‘the extent to which the proposal supports digital provision and/or blended learning arrangements’.

Fourth bullet point becomes fifth bullet point added: ‘enhancement and quality of a wider added before 14-19 agenda and agenda changed to offer i.e. ‘the extent to which proposals contribute to the ‘enhancement and quality of a wider 14-19 offer’ taking account of the views of regional 14-19 networks.

Fifth bullet point becomes sixth bullet point: added ‘and on the development and maintenance of a shared understanding of progression with other schools’ i.e. ‘the effect of proposals on 11-16 provision in schools ‘and on the development and maintenance of a shared understanding of progression with other schools’.

Sixth bullet point becomes seventh bullet point: ‘viability of institutions’ changed to viability of providers’, ‘good quality’ removed’ ‘Further Education Institutions’ changed to lower case and ‘private training organisations’ changed to ‘private training providers’ i.e. ‘how proposals would affect the viability of providers already providing post-16 provision, including school sixth forms, further education institutions, and private training providers.

Seventh bullet point becomes eighth bullet point: added ‘and wider area’ and ‘and support the strategic duty placed on the Commission to ‘promote post 16 education and training through the medium of Welsh’ added i.e. how proposals might affect the sustainability or enhancement of Welsh-medium provision in the regional 14-19 networks, local partnership arrangements and wider area and promote access to the availability of Welsh-medium courses in post-16 education and support the strategic duty placed on the Commission to ‘promote post 16 education and training through the medium of Welsh’.

New final bullet point: New ‘how proposals align to the statutory duty placed on the Commission to secure and fund the proper facilities for further education and training for post-16 learners.

Specific factors in the consideration of proposals for the change of language medium
<p>Advises readers that a Welsh Language Impact Assessment (WLIA) must be undertaken for all proposals and signposts annex C.</p> <p>First bullet point removed. Second bullet point: becomes first bullet point. the extent to which the proposal would support the targets in a local authority's Welsh in Education Strategic Plan (WESP).</p> <p>New second bullet point - how the proposal would expand or reduce Welsh language provision and, in the case of the latter, set out why provision will be reduced and evidence mitigating actions (see annex C).</p>
Additional factors to be taken into account in preparing, publishing, approving or determining proposals for the reorganisation of SEN provision/ALN provision
<p>New bullet point added: how the proposals will help the school secure SEP/ALP for pupils with SEN/ALN.</p>
Factors to be taken into account in approving/determining school organisation proposals
<p>Signposted a previous paragraph which advises on where a proposal is considered to be related.</p>
Section 2 - Changes that require proposals
<p>First paragraph, first sentence – removed the word 'usually' as statutory procedures are required for all significant changes to schools.</p>
Regulated alterations
<p>First paragraph, first sentence added 'and the Commission' after 'the relevant local authority and/or the governing body'. Removed the word 'should also' after 'reference' in the last sentence and 'added needs to be made' at the end of the sentence.</p>
Regulated alterations to community, foundation, voluntary schools, community special schools and maintained nursery schools
<p>Removed 'and special schools' from second bullet point as clear from the heading.</p>
Regulated alterations to community, foundation, voluntary schools, and community special schools
<p>Amended wording in second and third bullet points to clarify and better reflect the wording in paragraphs 5(1) and 6(1) of Schedule 2 of the 2013 Act in respect of regulated alterations to community, foundation, voluntary schools, and community special schools relating to change of age range and proposals affecting sixth forms.</p>
Regulated alterations to community special schools
<p>First and second bullet point removed 'for special schools' as this is clear from the heading.</p>
Regulated alterations to maintained nursery schools
<p>Second bullet point removed '(in a nursery school)' as this is clear from the heading.</p>
Who can make a proposal?
<p>Added a new paragraph 2.11: 'governing bodies of community, foundation or voluntary schools may make proposals to change the category school' to reflect section 45 of the</p>

2013 Act, which is now footnoted. Footnote also signposts paragraph 2.2 of the Code for information on restrictions of changes that may be made’.

Fifth paragraph amended to clarify the wording in respect of local authorities’ powers to make proposals in respect of sixth forms to better reflect Schedule 2 to the 2013 Act.

Removed sixth paragraph and replaced with new paragraphs 2.16 – 2.18 to reflect section 63C of the 2013 Act regarding the Commission’s powers arising from the 2022 Act.

Section 3 - Consultation

Principles

First paragraph, second sentence removed ‘or published under section 71 to reorganise sixth forms and replaced with ‘or published by the Commission under section 63C to restructure school sixth forms’ to reflect the 2013 Act, as amended by the 2022 Act.

Second paragraph, first sentence removed ‘made under section 43’ as section 43 is now footnoted. Second sentence removed ‘with fewer than 10 pupils’ as the definition of a small school is footnoted. Final sentence removed the word ‘still’ and replaced ‘which relate to the closure of rural schools’ with ‘that apply in respect of the closure of rural schools.’

Third paragraph ‘**should**’ replaced by ‘**must**’ to make clear that case law has established that the consultation ‘**must**’ be undertaken in accordance with the principles in the bullet pointed list that follows.

Attention to detail

Moved thirteenth paragraph under paragraph **3.6** under the heading consultation reports here. It reminds proposers that consultations on strategic reviews into provision **must not** take the place of the formal consultation necessary on individual proposals as required by the Code.

Procedures

Second paragraph amended to suggest additional ways proposers may engage consultees. Third paragraph comma added after ‘trust’.

Consultation document

First paragraph amended to reflect a new requirement on the proposer to publish the consultation document on the local authority’s website (if different) as well as its own.

Third paragraph – Added the following persons/groups to the list of recipients who must be advised of the availability of the consultation document, consultation report, statutory notice, decision notification:

- relevant transport and highways teams;
- the local authority family information service, any independent or voluntary providers who are likely to be affected and the national umbrella organisations supporting them: Mudiad Meithrin, NDNA Cymru, Clybiau Plant Cymru, Early Years Wales, PACEY Cymru and Play Wales in respect of proposals affecting nursery, childcare and play work provision;
- The Commission in respect of proposals affecting school sixth forms.
- Mentrau Iaith in the case of proposals affecting Welsh language provision.

First, third, fourth, fifth, sixth and seventh bullet points amended to clarify that this refers to schools which are the subject of the proposals and any other schools/education

institutions the proposer considers are likely to be affected by proposals. Additional examples of what this might include provided in first bullet point.

- Sixth bullet point, last sentence 'using the categories of the original 21st century schools survey updated to 'using the categories of the Sustainable Communities for Learning Programme annual buildings survey'.

Quality and standards in education

First bullet point replaced 'an analysis of the impact of proposals on the quality of the following' with 'With reference to Estyn's five inspection areas, the consultation must include an analysis of the likely impact of the proposal on'. Removed wording in brackets.

Amended a-d to reflect Estyn's Inspection Framework as of 2022. (a) to (d) now bullet points.

Replaced 'or educational institution which is likely to be affected with 'or education institution the proposer considers is likely to be affected by the proposals.

Second and third bullet points amended 'for each school likely to be affected with 'for the schools which are the subject of the proposal and each school the proposer considers is likely to be affected'. Added 'In the case of a school closure this should include any alternative schools to which learners may reasonably choose to transfer' at the end of the second bullet point.

Third bullet point removed 'at the foundation phase and each key stage of education' to reflect the new curriculum.

Welsh in Education Strategic Plan (WESP) amended to Welsh in Education

Added 'In addition to the Welsh Language Impact Assessment which must be undertaken for all proposals the consultation document **must** set out':

Second bullet point added 'and evidence mitigating actions' to 'how the proposal would expand or reduce Welsh language provision and, in the case of the latter, set out why provision will be reduced and evidence mitigating actions'.

Finance

Added 'In respect of financial considerations the consultation document must set out'.

Land and buildings

Added 'The consultation document must include':

Consultation details

Added 'The consultation document must include':

Fifth bullet point replaced 'a space for consultees to respond to the consultation' with 'a means for consultees to respond to the consultation online or in writing (a consultation response form)';

Removed Seventh bullet 'the new school's:'

(d) added 'including a map' after 'location' and replaced (a) to (i) with bullet points.

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

Second bullet point added at the end (a community impact assessment, (see Annex C)

<p>Second bullet point ‘the likely impact on staff of schools named in the proposals removed and becomes third bullet point.</p>
<p>Under third bullet point ‘In the case of alternative provision’ in the list (a) to (h) References to ‘alternative provision’ and ‘school(s) in the list (a) to (h) have been amended to proposed alternative schools or other education institutions.’ A new requirement for a map has been added. The list (a) to (h) has been replaced by a bullet pointed list and a new bullet point added at the end ‘any transitional arrangements’.</p>
<p>Where proposals involve the closure of a rural school and the decision has been made to consult on the proposal, the following information must be contained in the consultation document along with the information that must be contained for all proposals added ‘and the information that must be contained for the closure of schools:</p>
<p>Second bullet point added ‘the same matters that the proposer was required to assess in formulating the proposal at paragraph 1.40’ and removed the bullet pointed list below.</p>
<p>Where the proposal concerns adding or removing nursery provision, the following information must be included in the consultation document:</p>
<p>Removed third bullet point in line with Welsh Language Fourth bullet point added ‘likely’ before ‘effect’</p>
<p>Where the proposal concerns adding or removing sixth form provision. The following information must be included in the consultation document:</p>
<ul style="list-style-type: none"> • Added In the case of a removal of a school sixth form the name and location of the proposed alternative schools or other education institution learners may attend (including a map); • a comparison of the quality and standard of education provided at the school from which learners would be transferred and the proposed alternative schools or other education institutions 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 schools or education institutions; • the likely impact on staff of schools named in proposals; • the impact on learners’, staff and visitors’ journeys to the alternative schools or education institutions and on school transport costs; • information regarding available walking, wheeling and cycling routes and public transport to the alternative schools or other education institutions; • the language medium at the proposed alternative schools or other education institutions; • any transitional arrangements. <p>Second bullet point ‘as required under the Learning and Skills (Wales) Measure 2009’ replaced by ‘as required under the Curriculum and Assessment (Wales) Act 2021 and section 33A-Q of the 2000 Act’.</p>
<p>Where the proposal concerns a change of language medium the following must be included in the consultation document:</p>
<p>Removed first bullet point ‘projected demand from parents for the type of provision proposed and’</p> <p>Second bullet point removed ‘the extent to which existing provision, of the type proposed exceeds or falls short of projected demand.</p>

Added the following bullet points.

- the likely impact of the proposal on the Welsh language (a Welsh Language Impact Assessment must be included for all proposals);
- whether any school which is the subject of the proposals or any other school the proposer considers is likely to be affected provides teaching through the medium of Welsh;
- the extent to which the proposal would support the targets in the approved Welsh in Education Strategic Plan.

Where any school involved or affected provides teaching through the medium of Welsh the following must be included in the consultation document (removed)

First bullet point removed: An assessment of the impact on the Welsh language (a Welsh language impact assessment must be included either in the main part of the consultation document or as an Annex)

Second bullet point removed: an explanation of how the proposal forms part of the WESP.

Consultation with children and young people

First paragraph, second sentence added 'for example learners attending schools which are feeder schools.'

Second paragraph, last sentence removed the word 'help'.

Third paragraph removed 'version or'.

Consultation reports

First paragraph amended to reflect a new requirement on the proposer to publish the consultation report on the local authority's website (if different) as well as their own.

Second sentence replaced 'report' with 'consultation report and moved this sentence after new paragraph below.

Added new paragraph 'The list of consultees at paragraph 3.14, who were advised of the availability of the consultation document **must** be advised by letter or email of the availability of the consultation report and that they can receive a paper copy on request.

Third paragraph added 'in an appropriate format subject to their age and understanding' after '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.

Fifth paragraph bullet pointed list removed and paragraph signposted. 'in addition to the steps to be taken for all proposals' with 'in addition to the steps above'. Replaced 'is required to' with 'must' and removed the bullet point list of matters the proposer must assess in formulating proposal removed and signposted.

Ninth paragraph regarding publishing of consultation removed as it duplicates the first paragraph.

The list of those who must be advised of the availability of the consultation report has been removed and the list in paragraph 3.14 signposted (see above).

Twelfth paragraph 'set out the reasons why replaced by 'set out in detail the reasons why..'

Thirteenth paragraph moved to chapter 2.

Section 4 - Publication of statutory proposals
<p>Manner of publication</p> <p>Second paragraph the wording 'but not on a school day which includes a session which is devoted (wholly or mainly) to improving teaching standards or management practices of staff at the school (INSET days)' replaced with 'and should not be published on an INSET day' and definition of inset day footnoted.</p> <p>i and ii. in list combined to reflect the requirement for the statutory notice to be published on the local authority's website as well as the proposers where different.</p> <p>v. in the list amended to make clear that proposers may advise the relevant bodies of the statutory notice by other electronic means as well as email.</p> <p>i. to v. amended to a bullet pointed list.</p> <p>The list of respondents who must be sent a copy of the statutory notice removed and paragraph 3.14 of the Code which contains the list of required consultees signposted.</p> <p>Last paragraph 'it is no longer a requirement to publish in a newspaper' removed as this is well established.</p>
<p>Length of objection period</p> <p>Replaced first sentence with 'Any person may object to published proposals' and footnoted section 49(1) of the 2013 Act. Second sentence replaced 'or by e-mail' with 'including by e-mail'</p> <p>Second paragraph replaced 'Additionally' with 'In addition to the information in paragraph 4.6 a statutory notice for a proposal to establish a new school must state:'</p> <p>Third bullet point in the list that follows added 'including a map'.</p>
<p>Content of published statutory notice</p> <p>New bullet point added under 'A statutory notice for a proposal to alter a school or change its category 'in the case of the closure of a school sixth form must include details of alternative schools or other education institutions learners can transfer'</p> <p>The list of those who must be advised by letter or email of the availability of the Objection Report and that they can receive copy on request signposts the list in paragraph 3.14 of Section 3.</p>
<p style="text-align: center;">Section 5 - Determining proposals (other than proposals made by the Welsh Ministers) amended to Determining proposals (other than proposals made by the Commission)</p>
<p>Objection reports</p> <p>First paragraph (3) added after 'section 49' and (a) and (b) become bullet points.</p> <p>Second paragraph (i) and (ii) combined in respect of where the objection report must be published.</p> <p>Fourth paragraph - the list of those who must be advised by letter or email of the availability of the Objection Report and that they can receive copy on request has been removed and the list of statutory consultees at paragraph 3.14 has been signposted.</p>

Approval by the Welsh Ministers (section 50 of the 2013 Act.)

Under 'Proposals require approval by the Welsh Ministers under section 50 of the 2013 Act if' the wording has been amended as follows:

- 'and an objection has been made to the proposals 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' has been added after 'the proposals affect sixth form education.'

Under 'Proposals affect sixth form education if:' the wording of (a) and (b) has been amended to more closely reflect the legislation as follows:

- 'they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age (a sixth form school); or
- 'they are proposals to add a sixth form to a school or to remove a sixth form from a school which is to continue to provide education for learners of compulsory school age.'

Third paragraph replaced 'and forward to them copies of the statutory objections in addition to the objection report set out at paragraph 5.1 with a bullet pointed list of documents to be forwarded'.

Fifth paragraph added 'Before making any modification, the Welsh Ministers must first consult with the proposer and the relevant governing bodies and local authority (where they are not the proposers) and obtain the proposer's agreement to the modification'.

Sixth paragraph amended wording to Modifications **must** only 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. Removed '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. Added Emails should be sent to the following Welsh Government mailbox: Schoolsmanagementdivision3@gov.wales. It is not necessary to send emails to individual Welsh Ministers.

Approval by the local authority (section 51 of the 2013 Act)

Under 'Proposals published under section 48 require approval under section 51 of the 2013 Act if:' (a) (b) and (c) have been replaced with 'they do not require approval by the Welsh Ministers; they have been made by a proposer other than the relevant local authority; and 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'.

Under 'Procedures' second paragraph clarified by replacing 'Local authorities must decide whether any related proposals sent to them require their approval' with 'Local authorities **must** decide whether any proposals sent to them are related and require their approval. Relevant legislative provision footnoted.

Added 'A proposal **should** be regarded as "related" if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Where proposals are related the decision **should** be compatible.

Third paragraph replaced 'They must' with 'The local authority must' and removed '112 days' from the second sentence.

Added: The local authority **must** deal with all proposals which require approval without delay in so far as that is compatible with the proper consideration of the issues.

Fifth paragraph replaced 'Modifications can only include changes to matters related to implementation such as changes to admission numbers or to the timing of implementation' with 'Modifications **must** only include changes to admission numbers or to the timing of implementation' and footnoted relevant section of the 2013 Act.

Determination by proposers (section 53 of the 2013 Act)

Second paragraph removed (112 days)

Added new third paragraph 'Under section 49(3) of the 2013 Act when objections have been received proposers **must** publish a summary of the statutory objections and the proposer's response to those objections ("the Objection Report"). This **must** take place:

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

Third paragraph removed final sentence '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'.

Local authority decision making

First sentence removed '(as amended)'.

Moved 'Annex D provides details of a possible model for a local decision-making committee' so that it now sits under the first paragraph.

Decision notification

Fourth paragraph the list of those who were notified of the availability of the consultation document, consultation report and objection report has been removed and readers are signposted to the list in section 3.

[Referral of local authority decisions to the Welsh Ministers](#)

First sentence removed Under section 54 of the 2013 Act where proposals have been approved or rejected by a local authority the following bodies may, before the end of 28 days beginning with the day of the decision refer the proposals to the Welsh Ministers for determination' and the list numbered i. to v. and replaced with

If a local authority has—

- determined to approve or reject proposals under section 51(4), or
- 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)

the following bodies may, before the end of 28 days beginning with the day of the decision, refer the proposals to the Welsh Ministers for consideration:

- (a) another local authority (including a local authority in England) which is likely to be affected by the proposals;
- (b) the appropriate religious body for:
 - i. the school to which the proposals relate, if it is, or is intended to be a school with a religious character; or
 - ii. any other school which has a religious character, and which is likely to be affected by the proposals;
- (c) the governing body of a voluntary or foundation school which is the subject of the proposals;
- (d) a trust holding property on behalf of a voluntary or foundation school which is the subject to the proposals; and
- (e) a further education institution which is likely to be affected by the proposals.

Ninth paragraph 'would normally' replaced with '**must**' i.e. Modifications **must** only 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.

Section 6 - Implementing proposals

Second paragraph, first sentence removed 'under Section 55 of the 2013 Act' and relevant legislation footnoted. Removed 'after consultation with any affected governing body'

Third paragraph removed 'and after consultation with any affected governing body'

Fourth paragraph removed 'and after consultation with any affected governing body' and replaced with 'It is considered good practice for the proposer to discuss this with the governing body of the school which is subject to the proposals in advance'.

Fifth paragraph replaced 'have received approval by the local authority' with 'have been approved by the local authority'

Seventh paragraph – Split into two to clarify requirements imposed by the 2013 Act and requirement imposed by the Code i.e. 'Notification of any determination to delay, bring forward or abandon a proposal **must** be given to relevant parties including the Welsh Ministers, the maintaining local authority and/or the governing body of the school subject to the proposal unless they are the proposer before the end of 7 days of it being made. Notification should also be given to the Commission (where the proposal involves a sixth form) Estyn, and the governing bodies, parents, learners and staff of any other school the proposer considers is affected as appropriate, before the end of 7 days of it being made.

Removed paragraph 6.2 under the heading Implementation – change of category.

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

First paragraph added 'preceding' before 'January census point and corrected typo (26) removed. Added 'The following provisions do not apply:

- the requirement to consult on proposals to close the school
- the requirement to obtain approval of the Welsh Ministers
- the requirement to obtain approval of the local authority;
- referral to the Welsh Ministers;
- the requirement for the Commission to consult on proposals made by it;

- the requirement to obtain approval of the Welsh Ministers’.

Replaced second paragraph with ‘The streamlined procedure consists solely of the issue of the statutory notice of closure’.

New third paragraph added: ‘Although there is no requirement in the 2013 Act to consult on proposals to close such schools, as a matter of good practice the proposer should inform any trust with an interest in the school or appropriate religious body of their intentions prior to bringing forward such proposals.’ This is because sections 48(3) and 63D(3) provide absolutely that there is no duty to consult and there is no clear power to caveat that.

Third paragraph added ‘and their parents’ after ‘all learners’.

Fourth paragraph replaced ‘Proposers are encouraged to share information with parents and other schools with ‘Proposers should also ensure that parents of learners of other schools that the local authority considers are likely to be affected by the proposals receive a copy of the statutory notice. This includes any alternative schools identified as those most likely to receive learners’.

Sixth paragraph replaced bullet pointed list with ‘satisfying the requirements set out in paragraphs 1.28 to 1.43’ and replaced ‘closure notice’ with ‘statutory notice of closure’.

Section 8 – Proposals by Welsh Ministers to rationalise school places

Second paragraph – full stop added after ‘last resort’. New sentence beginning ‘Examples of where the Welsh Ministers might decide to issue a direction, might include’ added before ‘where a local authority has failed to ensure that:’

Fourth paragraph - New bullet pointed list added regarding referral to a local enquiry ‘The proposals to be referred are:

- any other proposals published under section 59 in relation to the area of the local authority (and not withdrawn);
- any proposals made by that authority in the exercise of their powers to make proposals to establish, alter, or discontinue schools (and not withdrawn)
- any proposals made by the governing body of a foundation or voluntary school in the area in the exercise of its powers to make proposals to alter its schools (and not withdrawn);
- any proposals made under section 63C (and not withdrawn) where the Commission has previously directed a local authority or governing body to bring forward proposals and subsequently published proposals to the same effect;
- any proposals made under section 68 (and not withdrawn) where the Welsh Ministers have previously directed a local authority or governing body to bring forward proposals and subsequently published their own proposals to the same effect.’

Ninth paragraph replaced ‘Modifications made by Welsh Ministers should normally extend only to include changes to admission numbers or to the timing of implementation’ with ‘Modifications **must** only include changes to admission numbers or to the timing of implementation.’

Final paragraph – Added ‘The local authority that maintains the school in question must meet the cost of implementing proposals adopted or approved under section 62 which

have effect as if they have been approved by the Welsh Ministers under section 50 after having been made by the governing body (in the case of proposals to alter a foundation or voluntary school).'

Section 9 – Proposals by the Welsh Ministers for regional provision for special educational needs (now becomes Section 10 replicating order in the 2013 Act).

First sentence removed the words 'an order directing...' and replaced with 'a direction under section 66 of the 2013 Act requiring...' to better reflect the relevant legislation.

Third paragraph replaced 'within the 28 day objection period' with 'before the end of 28 days beginning with the date on which the proposals were published'.

Fifth paragraph amended the sentence 'Modifications made by the Welsh Ministers **should** normally extend only to include changes to admission numbers or to the timing of implementation' to 'Modifications made by the Welsh Ministers **must** only include changes to admission numbers or to the timing of implementation'.

Replaced 'chapter 6 above' with section 6'.

Section 10 – Proposals by the Welsh Ministers to restructure sixth form education becomes **Section 9 - Proposals by the Commission for Tertiary Education and Research to restructure sixth form provision** (to reflect the 2013 Act as amended by the 2022 Act).

This section reflects provision in the 2022 Act which removes the Welsh Ministers' powers, under sections 71 to 76 of the 2013 Act to re-structure sixth form education. The 2022 Act inserts a new Chapter 3A into Part 3 of the 2013 Act to enable the Commission to take a more strategic approach, offering a wider perspective to school sixth form provision and ensuring it can support learner choice and progression.

Section 11 – Governing body notice to discontinue a foundation or voluntary school

Under the first paragraph number 2 in the numbered list has been amended to reflect Section 631(9) of the 2022 Act in respect of the requirement to consult the Commission rather than the Welsh Ministers, if discontinuing the school would affect facilities for full time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19.

Under the first paragraph number 2 in the numbered list added 'the' before 'requirements'.

Under the first paragraph number 3 in numbered list *added (there is no requirement to consult on proposals to discontinue a school which is a small school).*

New paragraphs 11.2 to 11.10 added to reflect section 80 of the 2013 Act in respect of notice by governing body to discontinue foundation or voluntary and relevant footnotes added.

Annex A – Illustrative flow chart of statutory process

Step 1 amended to: The proposer should refer to the list of rural schools in the Code to establish if a proposed school closure involves a rural school and the presumption against closure applies.

Step 5 amended to require the proposer to publish the consultation document on the local authority's website (if different) as well as its own.

Step 6 amended to advise that the list of parties that must be advised on the availability of the consultation report are those that were advised of the availability of the consultation document and relevant location signposted.

Annex B – Examples of statutory notices

Example of statutory notices on pages 63, 64 and 65 - First paragraph 'propose' amended to 'proposes'.

All examples of statutory notices have been amended to reflect a new requirement for proposers to publish the consultation report on the local authority's website (if different) as well as its own.

Page 63 – Ninth paragraph 'local education authority' amended to local authority.

Page 65 - Third paragraph typo corrected '2' removed.

Page 66 - First paragraph '(Wales)' added to School Standards and Organisation Act and Added: Where the alteration involves the removal of a school sixth form provide information on the alternative schools or other education institutions it is proposed learners will transfer, including any interim arrangements and the impact on transport]. Final paragraph typo corrected 'one' removed.

Annex C - Community impact and Welsh medium impact assessments amended to Welsh language and community impact assessments

First paragraph removed and replaced with 'Impact assessments **must** be included within the consultation document or published alongside it in order to inform the consultation process. They **must** contain sufficient evidence to support proposals and include evidence of mitigating factors where any potentially negative impacts have been identified. Early engagement and communication with the local community and all consultees is an effective way of establishing and understanding all the relevant factors.

Welsh language Impact moved up under first paragraph. First paragraph amended to 'A Welsh language impact assessment (WLIA) **must** be undertaken for all proposals regardless of the language category of the schools which are the subject of the proposals. It **must** include relevant evidence and mitigating factors below as a minimum requirement: Bullet point list amended.

Community Impact - First paragraph amended to 'A community impact assessment **must** be undertaken for any proposal to close a school. Information that **should** be included in a community impact assessment, includes the following:

Bullet pointed list of information which may be included in the Community Impact Assessment expanded.

Annex D - Local decision-making committee

Final paragraph – first sentence typo corrected 'of' removed.

Annex E - Legislation and national policies which will assist in the development of proposals

Updated to reflect more recent legislation and policies

Annex F – List of rural schools

Updated to reflect changes to the list since the 2018 Code came into force