

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.