

*These notes refer to the School Standards and Organisation (Wales) Act 2013 (c.1) which received Royal Assent on 4 March 2013*

# **SCHOOL STANDARDS AND ORGANISATION (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the School Standards and Organisation (Wales) Act 2013 which was passed by the National Assembly for Wales on 15 January 2013 and received Royal Assent on 4 March 2013. They have been prepared by the Department for Education and Skills of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. The powers to make the Act are contained in Part 4 and Schedule 7 of the Government of Wales Act 2006. The National Assembly for Wales has the legislative competence to make provision for and in connection with the School Standards and Organisation (Wales) Act 2013 by virtue of Schedule 7, subject 5 (education and training) and subject 9 (health and health services).
3. In these Explanatory Notes, “the 1998 Act” means the School Standards and Framework Act 1998.

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Introduction**

##### *Section 1 – Overview*

4. This section provides an overview of the key provisions of the Act. The Act has 6 Parts and 5 Schedules.

#### **Part 2 - Standards**

5. **Chapters 1 and 2** of Part 2 of this Act reform the existing law in respect of intervention by local authorities and Welsh Ministers in the conduct of schools maintained by local authorities and intervention by Welsh Ministers in the exercise of education functions by local authorities.
6. Generally, it will be for the local authority to take action in respect of schools causing concern in the first instance, and the Welsh Ministers will normally only take action where the authority has failed to do so, or where it has taken action, it has done so inadequately.

##### *Section 2 – Grounds for intervention*

7. This section sets out the eight grounds for intervention by a local authority or the Welsh Ministers in a maintained school.

8. The grounds for intervention set out in this section replace the grounds set out in section 15(2)(a) of the School Standards and Framework Act 1998 ('the 1998 Act'), with amendments. In addition grounds 5 and 6 are based on the Welsh Ministers' intervention powers in sections 497 and 496 respectively of the Education Act 1996 (governing body's unreasonable action or failure to comply with a duty). Incorporating provisions of sections 496 and 497 of the Education Act 1996 here means that local authorities as well as the Welsh Ministers can intervene in the conduct of a maintained school on the basis of a governing body's failure to comply with a duty or its unreasonable action. Grounds 5 and 6 also now include reference to a head teacher's failure to comply with a duty or unreasonable action.

### ***Section 3 – Warning notice***

9. This section provides that if one or more of grounds 1 to 6 set out in section 2 exist the local authority may give a warning notice to the governing body of a school, and specifies what information a warning notice must contain. The warning notice is generally the start of the process of intervention by a local authority in a school and may lead to the powers of intervention being exercised by it.

### ***Section 4 – Power to intervene***

10. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by a local authority. The powers of intervention are in sections 5 to 9.
11. Where a local authority is satisfied that one or more of grounds 1 to 6 exist, and it has complied with the warning notice procedure set out in section 3, then it may exercise its powers of intervention. However, if a local authority believes that one or more of grounds 1 to 6 exist and also believes there is a related risk to health and safety of any person that calls for urgent action then it does not have to comply with the warning notice procedure before exercising its powers of intervention.
12. In addition, the local authority may exercise its powers of intervention if it is satisfied that grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the local authority does not have to issue a warning notice.

### ***Section 5 – Power to require governing body to secure advice or collaborate***

13. This section provides a new power for a local authority to direct the governing body of a school to make arrangements or enter into a contract for the provision of advisory services or to collaborate in accordance with section 5(2) of the Education (Wales) Measure 2011, so as to improve the school's performance.

### ***Section 6 – power to appoint additional governors***

14. This section replaces the intervention power in section 16 of the 1998 Act, and provides local authorities with a power to appoint additional governors to the governing body of a maintained school.

### ***Section 7 – Power of local authority to constitute governing body of interim executive members***

15. This section replaces the intervention power in section 16A of the 1998 Act. It provides local authorities with a power to appoint a specially constituted governing body in place of the existing governors at a school where the local authority has a power to intervene. The specially constituted governing body is known as an interim executive board and it will take over the running of the school. Schedule 1 makes further provision about interim executive boards.

***Section 8 – Power of local authority to suspend right to delegated budget***

16. Under section 49 of the 1998 Act all maintained schools have a right to a delegated budget, which means that their governing bodies are entitled to manage the school's budget. This section replaces the intervention power in section 17 of the 1998 Act, and provides a power for local authorities to suspend a school's right to a delegated budget if a local authority has the power to intervene in the school.

***Section 9 – General power to give directions and take steps***

17. This section provides a general power for local authorities to issue such directions to the governing body or head teacher of a school it maintains as it thinks appropriate and to take any other steps when one or more of the grounds for intervention exist.
18. This section replaces section 62 of 1998 Act (local authority's power to prevent a breakdown of discipline). It also provides for local authorities to have powers similar to the Welsh Ministers' intervention powers in sections 496 and 497 of the Education Act 1996 (but unlike sections 496 and 497, the power to intervene here is not limited to those cases where grounds 5 or 6 exist).

***Section 10 – Warning notice***

19. This section sets out the circumstances in which the Welsh Ministers may give a formal warning notice to a maintained school. A warning notice is generally the start of the intervention process by the Welsh Ministers in a school, and may lead to the Welsh Ministers' powers of intervention being exercised.
20. The Welsh Ministers may issue a warning notice to the governing body of a school where one or more of grounds 1 to 6 (set out in section 2) exist, but the local authority has not given a warning notice or has done so in terms the Welsh Ministers consider are inadequate. The warning notice will explain to the governing body the reasons why it is being given and the action that the governing body should take.

***Section 11 – Power of the Welsh Ministers to intervene***

21. This section sets out the circumstances where the powers to intervene in a maintained school may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 12 to 17 of the Act.
22. Where the Welsh Ministers are satisfied that one or more of grounds 1 to 6 exist, and they have complied with the warning notice procedure set out in section 10, they may exercise their powers of intervention. However, if the Welsh Ministers are satisfied one or more of grounds 1 to 6 exist, and also believe there is a related risk to health and safety of any person which calls for urgent action, then the Welsh Ministers do not have to comply with the warning notice procedure before exercising their powers of intervention.
23. In addition the Welsh Ministers may exercise their powers of intervention if they are satisfied grounds 7 or 8 exist (schools found by an inspection to require significant improvement or to be in need of special measures). In this case the Welsh Ministers do not have to comply with the warning notice procedure.

***Sections 12, 13 and 14 – Powers of Welsh Ministers, etc***

24. These sections provide mirror powers to those of the local authority contained in sections 5, 6 and 7

***Section 15 – Power of Welsh Ministers to direct federation of schools***

25. This section replaces the intervention power in section 18B of the 1998 Act and provides the Welsh Ministers with the power to issue directions relating to the federation of

schools. A federation of schools is the grouping of two or more schools under a single governing body.

### ***Section 16 – Power of Welsh Ministers to direct closure of school***

26. This section replaces the intervention power in section 19 of the 1998 Act and provides the Welsh Ministers with the power to direct the closure of a school if they have the power to intervene on the basis of ground 8 (school requiring special measures). Where the Welsh Ministers direct the closure of a school under this section there is no need for a local authority to make proposals to discontinue the school under Part 3.

### ***Section 17 – General power to give directions and take steps***

27. This section provides a mirror power to that of the local authority in section 9 (general power to give directions and take steps).

### ***Sections 18, 19 and 20 and Schedule 1 – Supplementary***

28. **Section 18** introduces Schedule 1 which makes further provision in relation to interim executive boards (constituted following a direction under section 7 or 14). It deals with the transition from a normally constituted body to one consisting of interim executive members, and also the transition from a governing body consisting of interim executive members back to a normally constituted governing body. During the period in which the interim executive members are in post they must discharge the functions of the normally constituted governing body members. This means they are subject to the same law as normally constituted governing body members, except in relation to their constitution and procedures (paragraph 13 of Schedule 1). However, regulations made under certain paragraphs of section 19(3) of the Education Act 2002 may be applied to the board, for example, in relation to school staffing issues.
29. **Section 19** provides that a head teacher or governing body of a school must comply with a direction given to them by a local authority or the Welsh Ministers under Chapter 1 of Part 2 of this Act. A direction must be in writing and may be enforced by a mandatory order of a court.
30. **Section 20** provides a power for the Welsh Ministers to issue guidance to local authorities in relation to the exercise of its functions under this Chapter. Accordingly, a local authority must have regard to such guidance.

### ***Chapter 2 - Intervention in Local Authorities***

31. This Chapter sets out the circumstances in which the Welsh Ministers can intervene in the way a local authority is exercising its education functions (which are those functions set out in Schedule 36A to the Education Act 1996).

### ***Section 21 – Grounds for intervention***

32. This section sets out the grounds for intervention that must exist for the Welsh Ministers to intervene in a local authority. These grounds replace the grounds for intervention in local authorities set out in sections 496 to 497A of the Education Act 1996 for Wales. If one or more these grounds exist, the Welsh Ministers will be able to begin the process for intervention.
33. Sections 496 to 497A of the Education Act 1996 will now apply only to local authorities in England.

### ***Section 22 – Warning notice***

34. This section provides that if one or more of the three grounds set out in section 21 exist, the Welsh Ministers may issue a warning notice to the local authority and specifies what information a warning notice must contain. The warning notice must, among other

things, explain why the Welsh Ministers consider the grounds for intervention exist and what the local authority must do to deal with them. A warning notice is generally the start of the intervention process by the Welsh Ministers in a local authority, and may lead to the Welsh Ministers' powers of intervention being exercised.

### ***Section 23 – Power of Welsh Ministers to intervene***

35. This section sets out the circumstances where the powers to intervene in a local authority may be exercised by the Welsh Ministers. The powers of intervention are set out in sections 24 to 28.
36. Where the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist, and they have complied with the warning notice procedure set out in section 22, then they may exercise their powers of intervention. However, if the Welsh Ministers believe that one or more of grounds 1 to 3 exist, and also believe there is a related risk to health and safety of any person that calls for urgent action, or that the local authority is unlikely to be able to comply or secure compliance with a warning notice, then they do not have to comply with the warning notice procedure before exercising their powers of intervention.

### ***Section 24 – Power to require local authority to obtain advisory services***

37. This section replaces the intervention power in section 63 of the Education Act 2002 and provides a power for the Welsh Ministers to direct the local authority to obtain advisory services from a third party.

### ***Section 25 – Power to require performance of functions by other persons on behalf of authority***

38. This section provides a power for Welsh Ministers to direct a local authority to use the services of a third party to carry out its functions.

### ***Section 26 – Power to require performance of functions by Welsh Ministers or nominee***

39. This section allows the Welsh Ministers to direct that a local authority's functions are carried out by the Welsh Ministers or by a person nominated by the Welsh Ministers.

### ***Section 27 – Power to direct exercise of other education functions***

40. **Section 27** enables the Welsh Ministers, when issuing directions under section 25 or 26, to include directions that relate to any of the local authority's education functions, and not just those functions to which the powers to intervene relate.

### ***Section 28 – General power to give directions and take steps***

41. Where the power to intervene exists this section provides a general power to give directions to a local authority and take steps in relation to it. The taking of steps enables Welsh Ministers to do other things they consider might help to deal with the grounds for intervention other than making a direction.

### ***Section 30 – Duty to co-operate***

42. This section, which requires local authorities and governing bodies to assist with the action required to comply with directions, replaces section 497AA of the Education Act 1996 (power to secure proper performance: duty of authority where directions contemplated) with some amendments.

### ***Section 31 – Powers of entry and inspection***

43. This section, which sets out rights of access in connection with the carrying out of directions, replaces section 497B of the Education Act 1996 (power to secure proper performance: further provisions) with some amendments.

### ***Chapter 3 – School Improvement Guidance***

44. This Chapter provides for the Welsh Ministers to issue guidance to head teachers, governing bodies and local authorities about how to exercise their functions so as to improve standards of education.

### ***Section 32 - Meaning of “school authority”***

45. This section defines the term “school authority” to mean a local authority, governing body or head teacher of a maintained school in Wales.

### ***Section 33 - Power to issue school improvement guidance***

46. **Section 33** provides a power for the Welsh Ministers to issue guidance to school authorities setting out how they are to improve the standards of education in schools.

### ***Section 34 - Consultation and National Assembly for Wales procedures***

47. **Section 34** sets out the procedure the Welsh Ministers must follow before issuing school improvement guidance. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the guidance before the National Assembly for Wales.

### ***Section 35 - Duty to follow school improvement guidance***

48. This section places a duty on school authorities to comply with guidance issued under section 33.
49. This section does allow for school authorities to depart from that guidance in certain circumstances in order to provide for a degree of flexibility and innovation. Where a school authority which is a local authority or a governing body wishes to depart from the guidance it must issue a policy statement detailing its alternative policy for exercising the education functions concerned. It must then follow that alternative policy. If there is a partial departure from the guidance (subsection (2) or (3) and section 36), school authorities will have to adhere to both the policy statement and (in so far as the policy statement does not deal with a matter) the guidance.
50. In addition the duty to follow the school improvement guidance or a policy statement will not apply to any school authority if to do so would be unreasonable.

### ***Section 37 - Directions***

51. Where the Welsh Minister consider that the alternative course of action set out in a school authority’s policy statement is not likely to improve educational standards they may issue a direction to the school authority requiring it to comply with the guidance. A direction must be issued in writing and may be enforced by a mandatory order.

## **Part 3 - School Organisation**

52. **Part 3** reforms and brings together in one place the law relating to school organisation for Wales; requires the publication of a new Code on School Organisation; and, creates a new framework for the determination of proposals which receive objections, including a simplified process for proposals to close schools with fewer than 10 pupils.

***Sections 38 and 39 School Organisation Code etc***

53. **Section 38** creates a requirement for the Welsh Ministers to issue and publish a code (or codes) on school organisation (“the Code”) with which the persons listed at subsection (2) must act in accordance if the Code requires them to do so. The Code may also include guidelines setting out aims, objectives and other matters to which the named persons must have regard.
54. **Section 39** sets out the procedure that the Welsh Ministers must follow before issuing the Code. Amongst other things it requires consultation and for the Welsh Ministers to lay a copy of the Code before the National Assembly for Wales.

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

55. This section requires that the opening or closing of a maintained school, or the making of a significant alteration (known as a ‘regulated alteration’) be done in accordance with the processes set out in this Part – except where the Welsh Ministers are using their power of intervention to direct that a school be closed under section 16. The regulated alterations are set out in Schedule 2. Subsection (2) of section 40 prohibits the establishment of a new foundation or foundation special school in Wales. Subsection (5) prohibits any alteration to a maintained school that changes its religious character or causes it to acquire or lose a religious character.
56. Similar provision was made in sections 28(11) and 33 of the 1998 Act.

***Sections 41 to 44 and Schedule 2 - Proposals that may be made in respect of schools in Wales***

57. These sections give local authorities the power to make proposals to:
- establish a community, voluntary, maintained nursery, or community special school;
  - discontinue a community, maintained nursery, voluntary, foundation, or community special school;
  - make a regulated alteration to a community, maintained nursery, or community special school;
  - make a regulated alteration to increase or reduce capacity at a voluntary or foundation school that does not have a religious character;
  - make a regulated alteration to open or close a school’s sixth form at a voluntary or foundation school, with the consent of the Welsh Ministers.
58. In addition, any person may make proposals to establish a voluntary school, and the governing body of a foundation or voluntary school may make proposals to make a regulated alteration to the school or to discontinue the school.
59. **Schedule 2** sets out in detail the regulated alterations that may be made to a school. Amongst other alterations it allows for:
- alterations to the capacity of the school (paragraphs 10 to 14). In working out whether there is an alteration to the capacity of the school, previous alterations are taken into account so that changes to the capacity cannot be done incrementally without the need to make proposals;
  - an increase or decrease in the age range of the school (paragraph 5). An increase in the upper age range of a school does not permit the addition of a school sixth form. Separate provision in the Schedule (at paragraph 6) allows for a sixth form to be added (or removed) from a school;

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- alterations to the language medium of the school (paragraphs 7 and 8). These have been updated from the Education (School Organisation Proposals) (Wales) Regulations 1999 to reflect the introduction of the foundation phase and teaching methodologies in primary schools; these no longer refer to subjects but instead to percentages of time spent teaching pupils.

60. Paragraph 26 of the Schedule provides the Welsh Ministers with a power to add, change or remove a regulated alteration by Order.
61. These provisions are based on sections 28, 29 and 31 of the 1998 Act and regulations made under these powers.

**Section 45 to 47 - Changing a school’s category etc**

62. Schools maintained by local authorities (other than maintained nursery schools) are divided into the different categories set out in section 20 of the 1998 Act. Sections 45 to 47 (based on section 35 of, and Schedule 7 to, the 1998 Act) detail who may make proposals to change a school’s category; the grid below summarises this (VA means voluntary aided, VC means voluntary controlled and GB means governing body).

<i>Category of school</i>	<i>Can become</i>	<i>Proposer</i>
Community school	VA or VC	GB
VA school	Community or VC	GB
VC	Community or VA	GB
Foundation	Community, VA or VC	GB

63. No school may change category to become a foundation or foundation special school. No foundation or voluntary school with a religious character may change category to become a community school.
64. In order to become a VA school a GB must satisfy the Welsh Ministers that they are able to satisfy its funding obligations for a period of at least five years after the change of category takes place (section 46).
65. A change of category does not authorise a change in a school’s religious character, or authorise it to establish, join or leave a foundation body (as defined in section 21 of the 1998 Act).
66. If a school is to become a community school, transfer agreements detailed in Schedule 4 must be made.

**Section 48 - Publication and consultation**

67. This section requires that school organisation proposals are consulted upon and published. The Code will set out requirements for consultation and how and when proposals are to be published. Proposers must publish a report on the consultation. The proposers must send copies of the published proposals to the Welsh Ministers and the maintaining local authority. The requirement to consult does not however apply in the case of proposals to discontinue a small school, which is one with fewer than 10 registered pupils on the third Tuesday of the preceding January (defined in section 56). This date is the date upon which the Annual Schools Census currently takes place (and the number of pupils at a school on that date will therefore be known).

**Section 49 - Objections**

68. Section 49 enables any person to object in writing to proposals within 28 days of the publication date (known as “the objection period”), and requires proposers to publish a



summary of the objections together with their responses within 28 days of the end of the objection period. But where a local authority is determining its own proposals, it must publish the summary and response within 7 days of its determination under section 53. A local authority will determine its own proposals if they do not require the Welsh Ministers' approval under section 50.

### ***Sections 50 to 53 – Approval and determination of proposals***

69. Where proposals relate to sixth form education or the relevant local authority has objected to them, the proposals will require approval by the Welsh Ministers. Where there have been objections to proposals (made by a person other than the local authority), but they do not require the approval of the Welsh Ministers, they will require approval by the relevant local authority. The relevant local authority is the local authority that maintains, or will maintain, the school in question.
70. Where proposals require approval, the Welsh Ministers or the local authority may reject the proposals, approve them without modification, or approve them with a modification. A local authority may only modify the planned date of implementation or admission number. Before making a modification, a local authority must gain the consent of the Welsh Ministers and the proposer; the Welsh Ministers must gain the consent of the proposer.
71. The Welsh Ministers or a local authority may treat any other proposals which relate to proposals requiring their approval, as also requiring their approval.
72. Where proposals do not require approval, the proposer will determine whether they should be implemented.

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

73. Where a local authority has determined to approve or reject proposals, or determined to implement its own proposals to which there was an objection, the proposals may be referred to the Welsh Ministers for their approval by those bodies set out in subsection (2).

### ***Section 55 and Schedules 3 and 4 - Implementation***

74. **Section 55** requires that proposals which have been approved, or the proposer has determined should be implemented, must be implemented in the form in which they were approved or determined, and in accordance with Schedule 4 for change of category proposals, or in accordance with Schedule 3 for every other type of proposal.
75. **Schedule 3** provides further detail about the implementation of statutory proposals including responsibilities for implementing different types of proposals, and the provision of premises and assistance. Schedule 4 provides further detail about the implementation of change of category proposals, including the transfer of staff and land. This Schedule provides for and sets out the process by which governing bodies and local authorities must implement the proposals to change category and makes similar provision to that found in the Change of Category of Maintained Schools (Wales) Regulations 2001. It sets out, amongst other things, details on how staff and land are to be transferred. The Welsh Ministers are provided with a regulation making power in connection with how changing category affects the government of the school.
76. The proposer may delay determination for up to three years, or determine not to implement proposals at all if it is satisfied that implementation would be unreasonably difficult or that circumstances have so altered that implementation would be inappropriate. The proposer may also determine to bring forward implementation by up to 13 weeks.
77. In making such determinations, the proposer must notify the relevant governing body and local authority (where these are not the proposer). Where proposals have received

the approval of the Welsh Ministers or a local authority, the proposer must seek the agreement of the Welsh Ministers before making any determination to delay, abandon, or bring forward implementation.

78. **Section 55** and Schedule 3 replace, with amendments, Schedule 6 to the 1998 Act. Schedule 4 is based on the Change of Category of Maintained Schools Regulations 2001.

***Sections 57 to 63 - Rationalisation of Schools Places – powers and procedures***

79. These sections set out powers of the Welsh Ministers to direct local authorities and governing bodies to exercise their powers under Chapter 2 of this Part to make proposals to increase or decrease the number of school places in their area so as to address insufficient or excessive provision - i.e. “rationalise school places”.
80. If the local authority fails to rationalise school places, the Welsh Ministers are provided with powers to make their own proposals to rationalise places (and these provisions also set out the procedure to be followed in the event that such proposals are published).
81. These sections largely re-enact Schedule 7 to the 1998 Act.

***Sections 64 to 70 - Regional provision for Special Educational Needs, powers and procedures***

82. These sections set out the powers of the Welsh Ministers to direct local authorities to consider making regional provision for children with special educational needs, or to direct local authorities and governing bodies to make arrangements or proposals for regional provision. Regional provision may involve the provision of education at a school maintained by one local authority for children from other authorities, or the provision of goods and services by one local authority to other authorities or schools.
83. **Section 68** provides for the Welsh Ministers to make their own proposals in respect of regional provision (including the procedure to be followed in the event that such proposals are published).
84. These sections are based on provisions found at sections 191 to 193 of the Education Act 2002.

***Sections 71 to 77 - Proposals for restructuring sixth form education***

85. These sections, based on section 113A of and Schedule 7A to the Learning and Skills Act 2000, provide the Welsh Ministers with the power to make proposals for the establishment of new community, or community special schools, to provide sixth form education only; the addition or removal of sixth form education from any existing maintained schools; the discontinuance of any existing sixth form school; and the procedures to be followed if the Welsh Ministers publish proposals for restructuring sixth forms.
86. **Section 77** makes consequential amendments in respect of inspection reports on sixth form education. Section 113 of, and Schedule 7, to the Learning and Skills Act 2000 provided the Welsh Ministers with powers to publish proposals to discontinue a school that only offered sixth form education or to remove a sixth form from a school. These powers were triggered by an adverse inspection report by Her Majesty’s Chief Inspector of Education and Training in Wales. As section 71 provides a free-standing power for the Welsh Ministers to bring forward proposals for the alteration or removal of sixth forms, there is no longer a need for the triggers in Schedule 7 to the Learning and Skills Act 2000. However the requirement to report separately on the adequacy of the education of a school’s sixth form as part of a general school or an area inspection is still relevant, and the Education Act 2005 is amended to retain this requirement. These sections are based on provisions in paragraphs 1 to 6 of Schedule 7 to the Learning and Skills Act 2000.

### ***Section 78 - Federated schools***

87. **Section 78** allows proposals to establish a new school to include the establishment of the school as a federated school. A federated school is a school which is part of a group of schools with a single governing body.

### ***Section 79 - Prohibition on local authorities establishing schools in England***

88. This section prevents the establishment of a school in England which would be maintained by a local authority in Wales. This section re-enacts section 69 of the Education Act 2005.

### ***Section 80 - Notice by governing body to discontinue a foundation or voluntary school***

89. This section, which re-enacts and updates section 30 of the 1998 Act, enables the governing body of a foundation or voluntary school, following the procedure required by this section, to discontinue their school by serving two years' notice on the Welsh Ministers and local authority.

### ***Section 81 - Direction requiring the discontinuance of community special school***

90. This section which re-enacts section 32 of the 1998 Act allows the Welsh Ministers to direct a local authority to discontinue (without the need for proposals under section 44) a community special school if they consider it expedient to do so in the interests of health, safety or welfare of pupils. Before doing so the Welsh Ministers are required to consult specified persons. The Welsh Ministers must also provide notice to the relevant governing body and head teacher.

## **Part 4 - Welsh in Education Strategic Plans**

91. **Part 4** establishes a statutory requirement for local authorities to have Welsh in Education Strategic Plans (WESPs) in place. This replaces a voluntary scheme.

### ***Section 84 – Preparation of Welsh in education strategic plans***

92. This section sets out what a WESP should contain. This section places a duty on all local authorities to prepare a plan, keep it under review and revise it if necessary. This section also sets out with whom a local authority is required to consult in preparing or revising its WESP. If a local authority has carried out an assessment of demand for Welsh medium education pursuant to section 86 this section requires it to take the results of that into account in preparing or revising its plan.

### ***Section 85 - Approval, publication and implementation of Welsh in education strategic plans***

93. Each local authority will be required to submit its WESP to Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a WESP (imposing their own plan in its place). Subsection (7) places a duty on a local authority to take all reasonable steps to implement its approved WESP. The Welsh Ministers must consult with a local authority before they modify or replace a local authority's plan.

### ***Section 86 - Assessing demand for Welsh medium education***

94. This section provides a power for the Welsh Ministers to make regulations which require local authorities to assess parental demand for Welsh-medium provision in certain circumstances. Such regulations may make provision about when and how a local authority should undertake an assessment of demand.

### ***Section 87 - Regulations and guidance***

95. This section gives Welsh Ministers powers to make regulations which will make further provisions on matters such as the form and content of a WESP, its timing and duration, keeping the WESP under review, consultation and submission of the WESP for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.
96. This section also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions under Part 4 of this Act.

### **Part 5 - Miscellaneous Schools Functions**

#### ***Section 88 – Duty to provide free breakfasts for pupils in primary schools***

97. **Section 88** requires a local authority to provide breakfasts free of charge on each school day for pupils at a primary school it maintains if the governing body of the school has made a written request to the local authority for breakfasts to be provided and 90 days have passed since the authority received the request.
98. The local authority's duty to provide breakfasts will not apply if the governing body has asked the local authority to stop providing breakfasts, or the local authority decides that it would be unreasonable to provide, or continue to provide, breakfasts at the school.
99. The section sets out the requirements that must be met by a local authority when making breakfast arrangements. It also provides the Welsh Ministers with a power to issue guidance to which local authorities and governing bodies must have regard.

#### ***Section 89 – Transitional provision***

100. Subsection (1) of this section applies where a local authority that maintains a primary school, or its governing body, is providing breakfasts to pupils at the time the local authority's duty under section 88 comes into force. In such circumstances, the local authority's duty under section 88 will apply in relation to the school as if the requirements in section 89(1) have been met.
101. Subsections (2) and (3) apply if, before the local authority's duty under section 89 comes into force, the governing body of a maintained primary school makes a written request to the local authority to provide breakfasts at the school and neither the local authority or the governing body of the school has arranged for breakfasts to be provided to pupils at the school. In such circumstances the request made by a governing body is to be treated as though it was made on the day that the local authority's duty under section 88 came into force.

#### ***Section 91 – Amendment to power to charge for school meals etc***

102. This section amends sections 512ZA (power to charge for meals etc) and 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc) of the Education Act 1996.
103. Subsections (2)(b) and (3)(b) repeal the requirement that any charge made for the provision of milk, meals and other refreshments in a school must be the same for every person for the same quantity of the same item. The repeal of this requirement will give local authorities and governing bodies the option to charge different prices for the same quantity of the same item.
104. Flexible charging will for example, enable local authorities and governing bodies to charge less for school meals provided to children of families on low incomes not eligible for free school meals in order to encourage them to take school meals. Use of flexible

charging is optional and subject to local circumstances. This change will not affect the provision of free school meals (and free milk) to eligible pupils.

105. The effect of the amendments made by subsections (2)(a) and (3)(a) is that local authorities and governing bodies of maintained schools are prevented from charging more than the cost of providing milk, meals or other refreshments to pupils. Currently, there is no cap on how much a pupil can be charged. This will not affect the provision of free school meals (and free milk) to eligible pupils

### ***Section 92 – Independent counselling services for school pupils and other children***

106. **Section 92** requires a local authority to make reasonable provision for an independent counselling service in respect of health, emotional and social needs for specified categories of persons. This section sets out requirements that must be met by a local authority when making counselling arrangements.
107. It also provides the Welsh Ministers with a power to make regulations requiring local authorities to provide counselling services at locations specified in the regulations.

### ***Section 93 – Information about independent counselling services***

108. This section enables the Welsh Ministers to obtain information from a local authority about its independent counselling service. Subsections (1) and (2) require a local authority to comply with a direction of the Welsh Ministers by providing and compiling information about the counselling service. Subsection (3) prevents the disclosure of an individual's identity and subsection (4) sets out the position where the person providing the counselling service is not the local authority.

### ***Section 94 – Duty of governing body of maintained schools to hold meetings following petition by parents***

109. This section provides out that a governing body must hold a meeting if the following four conditions are met –
- it receives a petition requesting a meeting from whichever is the lower of:
    - the parents of 10% of registered pupils, or;
    - the parents of 30 registered pupils.
  - the meeting is for the purpose of discussing a matter relating to the school;
  - that there will be no more than three such meetings in a school year; and
  - that there are enough school days left in the school year in which to hold the meeting.
110. Upon receipt of a request the governing body must inform parents of registered pupils at the school of the date and purpose of the meeting and must hold the meeting within 25 days (as calculated in accordance with subsection (9) and (10)) of receipt of the petition.
111. The governing body must have regard to guidance issued by the Welsh Ministers on how to discharge their duty in this section.

### ***Section 95 – Repeal of duty to hold annual parents' meeting***

112. As a consequence of the provision on parents' meetings in section 94, this section repeals section 33 of the Education Act 2002 which required governing bodies of maintained schools to hold an annual parents' meeting (and consequently the Annual Parents' Meeting (Exemption) (Wales) Regulations 2005 made under that power will lapse).

## **Part 6 - General**

### ***Section 97 – Orders and regulations***

113. This section requires the regulations and orders under the Act to be made by statutory instrument and provides the National Assembly for Wales procedure in respect of these instruments.

### ***Section 98 – General interpretation and index of defined expressions***

114. **Section 98** defines terms used in the Act and also contains an index of terms that are defined for the purpose of some provisions of the Act. Subsection (1) provides that the Act is to be read as one with the Education Act 1996. This means that general provisions and general definitions in that Act will also apply to this Act. For example the definition of the “education functions” of a local authority in the Education Act 1996 refers to the functions set out in Schedule 36A to that Act. That term, when used in this Act, has the same meaning. If there is a difference in meaning between a term used in this Act and in the Education Act 1996, the meaning given for the purpose of this Act applies.

### ***Section 99 and Schedule 5 – Minor and consequential amendments***

115. **Section 99** gives effect to Schedule 5, which contains minor and consequential amendments as a result of the provisions in Parts 2, 3 and 5 of this Act.
116. Amongst other things it amends the Diocesan Board of Education Measure 1991. This is a Church of England Measure. Whilst almost all of Wales is within the boundaries of the Church in Wales, there are some parishes in Powys that form part of dioceses within the Church of England.
117. Amendments to the Church of England Measure could have been made by this Act, by the Secretary of State for Wales under section 150 of the Government of Wales Act 2006, by a UK Act of Parliament or by a Church of England Measure. The Welsh Government sought the views of the Church of England on this matter and obtained the agreement of the Secretary General to the Archbishops' Council to the amendments to be made by this Act.

### ***Section 100 – Commencement***

118. This section provides for sections 1 (overview), 100 (commencement) and 101 (short title and inclusion as one of the Education Acts) to come into force the day after Royal Assent is received.
119. **Sections 88 to 90** (free school breakfasts) and sections 92 and 93 (school-based counselling) come into force on 1 April 2013.
120. **Chapter 3** (school improvement guidance) of Part 2, section 91 (amendment to power to charge for school meals etc) and paragraphs 31, 34(1) and (3), 35 and 36 of Part 3 of Schedule 5 (amendments consequential on section 91) (and section 99 in relation to those paragraphs), and sections 94 and 95 (parents’ meetings) and paragraph 33 of Part 3 of Schedule 5 (amendment consequential on sections 94 and 95) come into force 2 months after Royal Assent is received.
121. The remainder of the Act will come into force in accordance with one or more commencement orders made by the Welsh Ministers.

### ***Section 101 – Short title and inclusion as one of the Education Acts***

122. This section establishes the Act’s title as the School Standards and Organisation (Wales) Act 2013. It also provides that the Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This means that references in any legislation to “the Education Acts” will include this Act.

**Schedule 1**

123. Schedule 1 is introduced by section 18.

**Schedule 2**

124. Schedule 2 is introduced by section 40.

**Schedule 3**

125. Schedule 3 is introduced by section 55.

**Schedule 4**

126. Schedule 4 is introduced by section 55.

**Schedule 5**

127. Schedule 5 is introduced by section 99.

**RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

128. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=3633>

<i>Stage</i>	<i>Date</i>
Introduced	23 April 2012
Stage 1 – Debate	23 October 2012
Stage 2 Scrutiny Committee – consideration of amendments	14 and 28 November 2012
Stage 3 Plenary - consideration of amendments	15 January 2013
Stage 4 - Approved by the Assembly	15 January 2013
Royal Assent	4 March 2013