

Explanatory Memorandum to the School Organisation Code 2026

This Explanatory Memorandum has been prepared by the Education Directorate of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.14.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the School Organisation Code 2026.

Lynne Neagle MS
Cabinet Secretary for Education
6 February 2026

1. Description

- 1.1 The School Organisation Code (“the Code”) imposes requirements and includes guidelines setting out aims, objectives and other matters in respect of school organisation on the Welsh Ministers, local authorities, governing bodies of maintained schools, the Commission for Tertiary Education and Research (Medr), and the promoters of proposals to establish voluntary schools.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 The Code takes into consideration and corrects errors highlighted by the Legislation, Justice and Constitution Committee’s report on the draft Code laid on 4 December 2025, SL(6)688¹ and which was subsequently withdrawn on 2 February 2026.

3. Legislative background

- 3.1 Section 38 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) requires the Welsh Ministers to issue a School Organisation Code, which they may from time-to-time revise.
- 3.2 Section 39 of the 2013 Act requires that before issuing a Code the Welsh Ministers must consult on a draft. If they wish to proceed with the draft, they must lay the draft before the Senedd. If, before the end of the 40-day period, the Senedd resolves not to approve the draft of the Code, the Welsh Ministers must not issue the proposed Code in the form of that draft. If no such resolution is made before the end of that period, the Welsh Ministers must issue the Code (or revised Code) in the form of the draft, and the Code (or revised Code) comes into force on the date appointed by order of the Welsh Ministers.

4. Purpose and intended effect of the legislation

- 4.1 The Code imposes requirements with which the relevant bodies listed above must comply and statutory guidance to which they must have regard and sets out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and those responsible for approving/determining proposals.
- 4.2 The previous Code was issued in 2018 and was the second edition of the Code. The Code has been reviewed after over five years of operation and a number of changes have been made. The majority of these changes reflect changes to legislation and policy that have taken place since the second version of the Code was issued or reinforce requirements in respect of legislation which was in place at that time. These are listed

¹ <https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=46912>

below:

Welsh Language Standards

- 4.3 The Welsh Language Standards (No.1) Regulations 2015 specify standards in relation to the conduct of certain bodies (including the Welsh Ministers and county and county borough councils). Standards include service delivery standards, policy making standards, operational standards, promotional standards, and record keeping standards.
- 4.4 Schedule 2 of the 2015 Regulations sets out policy making standards which require bodies to ensure that due consideration is given to the effects of policy decisions on opportunities to use the Welsh language and not to treat the Welsh language less favourably than English. Policy making standards 88-97 are relevant to school organisation proposals as bodies **must** comply with them when making all policy decisions, including school organisation proposals. In relation to statutory proposals, the duty is not limited to proposals in respect of Welsh language schools, it applies to proposals relating to all maintained schools, regardless of their language category.
- 4.5 Under standards 91, 92 and 93, consultation documents **must** consider the impact of a policy decision on the Welsh language and also seek views on the impact of the policy decision on the Welsh language. These are separate requirements, which means that there has to be an impact assessment and then questions have to be asked about that assessment.
- 4.6 The Code has been updated to reflect these policy making standards. In doing so the Code requires a Welsh language impact assessment (WLIA) to be undertaken for all statutory proposals as part of the consultation document or published alongside it.

Cymraeg 2050

- 4.7 The Code has been amended to align with *Cymraeg 2050*, the Welsh Government's strategy for a million Welsh-speakers, and the targets set within each local authority's 10-year Welsh in Education Strategic Plan (WESP) which supports that ambition. Given the importance of the education sector as a whole in creating new Welsh speakers, the Welsh Government expects that planning and development of school organisation proposals reflect *Cymraeg 2050* ambitions and support the targets within the local authority's WESP.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018

- 4.8 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act") establishes the statutory system in Wales for meeting the additional learning needs (ALN) of children and young people (the ALN system). It replaces the system for meeting the special educational needs

(SEN) of children in schools and learning difficulties and/or disabilities (LDD) in further education.

- 4.9 Implementation of the 2018 Act commenced from 1 September 2021. The ALN system was phased over a period of four years up until summer 2025. During this time the ALN system operated in parallel with the SEN system.

The Curriculum and Assessment (Wales) Act 2021

- 4.10 The Code has been amended to align with the Curriculum and Assessment (Wales) Act 2021 which provides for the introduction and development of the Curriculum for Wales for 3 to 16-year-olds in Wales.

The Tertiary Education and Research (Wales) Act 2022

- 4.11 The Tertiary Education and Research (Wales) Act 2022 (“the TER Act”) established the Commission for Tertiary Education and Research (“the Commission” or “Medr”). The Commission is the regulatory body with responsibility for the funding, oversight and regulation of tertiary education and research in Wales encompassing post-16 education, including local authority-maintained school sixth forms. It has the function to secure and fund the provision of proper facilities for the further education and training of post-compulsory learners aged 16–19.

- 4.12 The TER Act made the following amendments to the 2013 Act, in relation to school organisation. The Welsh Ministers’ powers, under sections 71 to 76 of the 2013 Act, to re-structure sixth form education, were removed. A new Chapter 3A was inserted 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.

- 4.13 Local authorities and governing bodies of foundation and voluntary schools retain their current functions in relation to bringing forward proposals relating to the organisation of school sixth forms. The Commission’s functions do not result in any loss of existing protections in relation to the publication, consultation, and ability to object to proposals and other significant provisions in the 2013 Act remain in place.

- 4.14 The Code has been amended to reflect the changes made to the 2013 Act by the TER Act in respect of school organisation.

Other changes to the Code

- 4.15 Other changes to the Code strengthen current requirements. For example, the Code sets a high standard for consultation providing all those with an interest to make their views known on proposals and have their views taken into account. Proposers are already required to publish key documents such as the consultation document, consultation report,

statutory notice, objection report and decision notification on their website where they have one.

- 4.16 We have imposed a new requirement on proposers to publish these key documents on the local authority's website as well as their own (where different) and reviewed and extended the list of interested parties who must be advised of the availability of these documents and that they can receive a copy on request.
- 4.17 We have also extended the information which must be included within the consultation document and in the WLIA, which must now be undertaken for all statutory proposals. The aim is to ensure that the WLIA is robust and that both the consultation document and the impact assessment include sufficient information to enable stakeholders to provide an informed response.
- 4.18 We have also clarified existing requirements in the Code, where that was needed, improved the format of the Code for ease of reference and taken the opportunity to correct any grammatical or typographical errors.

Duty to consult

- 4.19 In accordance with section 39 of the 2013 Act, the Welsh Ministers must consult the following persons on a draft of the Code (or revised Code) before it may issue or revise a Code:
- each local authority,
 - the governing body of each maintained school,
 - His Majesty's Chief Inspector of Education and Training in Wales,
 - The Commission for Tertiary Education and Research (Medr),
 - any other person the Welsh Ministers consider appropriate.
- 4.20 A 12-week public consultation on the draft revised Code ran from 8 November 2024 to 14 February 2025. The consultation was published on the Welsh Government website and along with the statutory consultees above, was drawn to the attention of other key stakeholders including the Children's Commissioner for Wales and the education unions.
- 4.21 The summary of consultation responses document is available at: [School organisation code | GOV.WALES](#)

5. Regulatory Impact Assessment (RIA)

- 5.1 The Code is not subordinate legislation made by statutory instrument and therefore falls outside of the definition of 'relevant Welsh subordinate legislation' set out in section 76(2)(b) of GOWA 2006 and the Welsh Ministers RIA Code for Subordinate Legislation. As such, no RIA is

required.

- 5.2 However, we have given consideration to the implications of changes made to the Code. The majority of these changes make factual amendments in order to reflect legislation or to clarify existing requirements. Remaining changes made do not alter the policy (or its impact) in any significant way or how it is applied in a given situation. We do not consider that these changes impose additional financial burdens on local authorities or other proposers.

6. Post implementation review

- 6.1 The Code is subject to ongoing review whilst it is in force. We aim to undertake a full review of the Code approximately every 5 years or earlier if necessary. As part of this we will continue to liaise with the ADEW Provision of School Places (POSP) Group which has representation from all local authorities.