

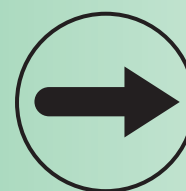
# Guidance accompanying the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004

National Assembly for Wales Circular No: 48/2004

Date of Issue: 8 November 2004

Please note: This guidance will be modified in due course to take account of operational and organisational changes brought about by the merger of ELWa with the Welsh Assembly Government

Guidance  
Circular



Organisation of  
Post 16 Learning  
Provision

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Adran Hyfforddiant ac Addysg  
Department for Training and Education



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

- Title of Document:** Guidance Accompanying the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004
- Audience:** National Council for Education and Training for Wales (ELWa), Chief Executives of Local Education Authorities (LEAs); further education institutions (FEIs); schools with sixth forms; Higher Education Institutions (HEIs) offering FE provision; Providers of work-based learning; and Community Consortia for Training and Education. It has also been sent to 14-19 Networks and to Young People's Partnerships (YPPs) and Careers Wales Companies for information.
- Overview:** This document summarises the main provisions of section 113A of the Learning and Skills Act and of The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004 and gives guidance on the exercise of ELWa's powers under these regulations. The Regulations and this guidance will be modified in due course to take account of operational and organisational changes brought about by the merger of ELWa with the Welsh Assembly Government.
- Action required:** This document gives advice on how ELWa and their partners should interpret the Regulations when making School Organisation proposals.
- Further Information:** Enquiries about this circular should be directed to:  
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Or from the Assembly's website [www.learning.wales.gsi.gov.uk](http://www.learning.wales.gsi.gov.uk)
- Related documents:** Education Act 2002  
The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004  
The Learning and Skills Act 2000  
The School Standards and Framework Act 1998

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## **GUIDANCE ACCOMPANYING THE SCHOOL ORGANISATION PROPOSALS BY THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES REGULATIONS 2004**

### **Summary**

The enclosed guidance accompanies the School Organisation Regulations 2004

<http://www.wales-legislation.hms.gov.uk/legislation/wales/wsi2004/20041576e.htm>

### **[English]**

<http://www.wales-legislation.hms.gov.uk/legislation/wales/wsi2004/20041576w.htm>

### **[Welsh]**

and is intended to aid ELWa and other stakeholders in interpreting the Regulations when preparing any proposals relating to the organisation of schools. ELWa is under a duty to have regard to this guidance when exercising its powers under these Regulations.

The guidance sets out the procedures to be followed by Elwa in developing and making such proposals, it is not an exhaustive nor a complete statement of the law. ELWa is required to exercise its powers under the Act in collaboration with other partners who have an interest in the organisation of post -16 provision, such as LEAs, CCETs and schools. ELWa's main aim in preparing any such proposals must be to improve the range of provision, improve participation and to raise standards overall for post-16 learners.

The announcement in July 2004 regarding the merger of ELWa with the Welsh Assembly Government by April 2006 means that the Regulations and the guidance will need to be modified in due course to take account of operational and organisational changes brought about by the merger.

Indeed, the Minister has said that she will not consider any proposals emanating from ELWa regarding school organisation that would take effect before September 2006, by which time the Regulations and guidance will have been reviewed. However, it is not anticipated that there will be any material changes in the purpose of the Regulations or in the principles of procedure incorporated in this initial guidance as a consequence. The guidance is therefore to be followed in the interim by ELWa and other parties in developing proposals to be considered for approval by the Minister from September 2006.

Enquiries about the content or operation of the guidance should be addressed to Justin Davies, Lifelong Learning Division, Welsh Assembly Government, Cathays Park, Cardiff. He can be contacted by telephone on 02920 8256097 or by e-mail at:

**[Justin.davies@wales.gsi.gov.uk](mailto:Justin.davies@wales.gsi.gov.uk)**

## **INTRODUCTION**

- 1** Section 72 of the Education Act 2002 inserts a new section 113A of, and Schedule 7A to, the Learning and Skills Act 2000. They allow the National Council for Education and Training for Wales (ELWa) to bring forward reorganisation proposals in respect of 16-19 provision in Wales.
- 2** The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004 detail the procedures for ELWa to bring forward proposals under sections 113 and 113A of the Learning and Skills Act.
- 3** Part 1 of the regulations is the interpretation section. Part 2 deals with proposals by ELWa under section 113A. Part 3 details the procedures for ELWa proposals in respect of inadequate sixth forms and re-enacts The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2003.
- 4** This guidance principally details those sections of the regulations which relate to procedures under section 113A of the Learning and Skills Act 2000. The guidance applies to all maintained secondary schools, including special schools, in Wales.
- 5** Copies of the regulations may be obtained from the HMSO website at [http://www.wales-legislation.hmso.gov.uk/legislation/wales/wales\\_legislation.htm](http://www.wales-legislation.hmso.gov.uk/legislation/wales/wales_legislation.htm)

## **PURPOSE AND SCOPE OF THE GUIDANCE**

- 6** This guidance summarises the main provisions of section 113A of the Learning and Skills Act and of The School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004 and gives guidance on the exercise of ELWa's powers under these regulations. By virtue of section 113A(7) ELWa is under a duty to have regard to this guidance in exercising its new powers. Each proposal submitted to the National Assembly for Wales for a decision will be considered on its individual merits. Additionally paragraph 54 gives guidance to LEAs and governing bodies as to the circumstances when other statutory proposals are related to proposals published by ELWa.
- 7** This guidance is to assist the ELWa to make appropriate decisions on the organisation of post -16 provision and for the information of other stakeholders with an interest, such as LEAs. It is not intended that this guidance should be an exhaustive nor a complete and authoritative statement of the law. Responsible bodies should familiarise themselves with the legal requirements contained in section 113A of the Learning and Skills Act 2000 as inserted by section 72 of the Education Act 2002 and Part 2 of the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004.
- 8** It is the intention of the Welsh Assembly Government that ELWa should exercise its powers under the Act in collaboration with other partners who have an interest in the organisation of post -16 provision, such as LEAs and schools.

ELWa's main aim in reorganising sixth forms will be to improve the range of provision and raise standards overall for post-16 learners. ELWa should be able to lead in planning coherent and diverse post-16 provision within an area but it should ensure that there are effective collaborative mechanisms within which different interests can be taken into account.

**9** In particular, ELWa should work closely in collaboration with LEAs where it is considering bringing forward reorganisation proposals for post-16 provision. LEAs remain the maintaining authority in the case of all maintained secondary schools. ELWa should facilitate formal collaborative working arrangements with LEAs both bilaterally and through the medium of Community Consortia for Education and Training (CCETs) where appropriate. LEAs will be an essential source of advice and information, including having up-to-date information on pupil numbers and surplus places in an area. Additionally, many LEAs have a detailed knowledge and experience of reorganisations within the maintained schools sector.

**10** In respect of collaboration between different interests the main organ for this should be the appropriate CCET or CCETs. Community Consortia for Education and Training are advisory bodies established to consider the training and education needs of the localities they serve. ELWa should seek to air proposals within these fora for local discussion at an early stage.

## **BACKGROUND AND CONTEXT OF REGULATIONS**

**11** Under Schedule 7 of the Learning and Skills Act 2000 ELWa has powers to propose the closure of school sixth forms that have been shown to be inadequate in two consecutive ESTYN reports. In such cases ELWa must submit any proposals for closure of a school sixth form to the National Assembly for Wales for a decision.

**12** Section 113A of the Learning and Skills Act widens ELWa's powers in post-16 planning and delivery to complement its enhanced funding responsibilities since 1 April 2002, when ELWa was given responsibility for core funding of school sixth forms and for post-16 Special Educational Needs (SEN) provision through LEAs. Section 113A enables ELWa to make proposals to open, close or alter a school sixth form or 16-19 institution either to meet recommendations made in the report of an area inspection or where the reorganisation will raise standards of achievement, increase student participation or expand the range of educational opportunities.

**13** These powers complement and do not supersede the existing powers of LEAs and school governing bodies in respect of school reorganisations. LEAs have powers under the School Standards and Framework Act 1998 to propose all types of school reorganisation for community secondary schools, including the addition or removal of post 16 provision. They may also propose the opening or closing of foundation and voluntary schools, but not alterations such as the addition or removal of sixth forms. The power to make statutory proposals for the addition or removal of post 16 provision in foundation or voluntary schools rests with the governing body. The statutory procedures for making such proposals include a

requirement for consultation with all interested parties, including parents who might be affected, other schools which could be affected, neighbouring LEAs and other local interests. For post 16 proposals, ELWa and CCETs should also be consulted.

## **SUMMARY OF REGULATIONS**

**14** Part 2 of the *School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004* details the processes that ELWa should follow in developing and publishing proposals under section 113A, as well as the information to be included in its proposals in respect of school sixth forms. The main details of the regulations are:

- a consultation requirement which affords opportunity to schools, LEAs, employers, parents and pupils to put forward their views;
- the manner of publication;
- the publication of proposals;
- an objections period;
- the timescales for proposals;
- the information that ELWa must provide when publishing proposals; and
- provision for the final decision on such proposals, which will rest with the Minister for Education and Lifelong Learning under National Assembly delegation arrangements. The Minister also has responsibility for considering changes to Further Education provision.

## **OBJECTIVES OF ELWa REORGANISATION PROPOSALS**

**15** Proposals must be made with a view to:

- meeting recommendations made in the report of an area inspection; and/or
- raising standards of achievement;
- increasing student participation; or
- expanding the range of educational opportunities available to learners.

**16** ELWa should consider all relevant provision in an area and not just one particular institution. Where the proposals are not combined with any proposals for reorganisation of FE colleges ELWa needs to be able to show that reorganisation will achieve one or more of the objectives below for the sixth forms in question. Where the proposals are combined with proposals for reorganisation of FE colleges ELWa needs to be able to show that the combined reorganisation will promote one or more of the objectives in the sixth forms and the FE colleges taken together.



**17** In all cases ELWa should consider whether changes can be effected without resorting to institutional reorganisation; but where, in its view this, is not possible, ELWa may bring forward proposals. ELWa should take the lead in bringing forward proposals; but it should do so working in collaboration with relevant partners such as LEAs, schools and CCETs, and where appropriate, FE institutions, work-based learning providers and employers in the area. ELWa must be able to show that the reorganisation will enable sixth forms to meet one or more of the following objectives:

***Objective 1: improve educational achievement amongst 16-19 year olds***

**18** ELWa should consider whether the proposals would improve the standards of educational provision in the area, and the effect of the proposals on existing provision. In particular ELWa proposals should tackle any weaknesses in individual institutions which significantly undermine the adequacy or sufficiency of local provision overall. In the case of inadequate sixth forms ELWa should specifically consider progress against any action plan put in place to address these deficiencies and the results of ESTYN's monitoring reports. ELWa will need to have information on performance of, and qualifications attained by students in, all local institutions and undertake an assessment of pupils' prior achievements and the value added. ELWa should use any available information on value added alongside examination results and other performance information. ELWa should also consider inspection reports on individual institutions in the area and look at research data on benchmarking with particular emphasis on progress for the last 3 years and data on progression of pupils to Higher Education or employment.

***Objective 2: increase local participation amongst 16-19 year olds***

**19** ELWa should consider whether the proposals would increase local participation rates, including in respect of retention. ELWa will need evidence from inspection reports and provider reviews showing that the participation and/or retention rates are falling or are low in relation to regional and national rates. ELWa should also take account of findings of provider reviews; progress against strategies for raising participation and retention rates area wide, and the likely effect on other local education institutions where closure of a sixth form or other provider body is proposed. ELWa should consider whether closure proposals are appropriate where changes in demography means pupil numbers are falling. It should also consider whether current provision is of sufficient size and number to cope with an increase in pupil numbers, and the impact of the proposals on other institutions.

***Objective 3: expand the range of opportunities amongst 16-19 year olds***

**20** ELWa should consider whether the proposals would deliver a broad and balanced choice of learning opportunities, taking into account the impact of the 14-19 Learning Pathways agenda, and the activities of local 14-19 Learning Networks. ELWa should take account of the quantity and quality of current post-16 educational and training provision, including widening educational options offered to students, strategies for widening student access and the provision of student support and careers advice to learners. ELWa should also consider the



impact of the proposals on the availability of denominational provision, and on the Welsh language and on the availability of learning opportunities through the medium of Welsh.

**21** ELWa should also consider whether there are imbalances between the supply of, and demand for, post-16 places within the current provision, considering its own planning strategies for post-16 provision and LEA's School Organisation Plans. Data from LEAs and the Assembly should be used. ELWa should take a view on the likely future demands for places using evidence on student demographics and trends in participation rate. This should include local, regional and national participation and staying on rates; students' access to other institutions; economic and labour market data, and any particular skills shortage information. ELWa should consider the overall impact of closure or expansion on local provision.

**22** In developing the proposals to meet these objectives ELWa should generally consider the financial viability and cost effectiveness of the solutions they propose. ELWa should also consider the financial viability and efficiency of all those institutions offering post-16 provision including sixth forms, FE colleges and work-based provision. It should consider evidence of any significant findings arising from area inspections, particularly those in neighbouring LEAs. It will need evidence from institutional inspection reports and provider reviews to judge progress against agreed action plans.

**23** Financial considerations should not be the overriding factor. Section 31(3) of the Learning & Skills Act 2000 provides that ELWa in performing its duty under that section must, amongst other things, "avoid provision which might give rise to disproportionate expenditure". Section 31(4) provides that "provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision". Current post-16 provision that is of high quality, relevant, offers value for money, and is fully supported locally should not be considered for closure on grounds of cost alone.

#### **TYPES OF STATUTORY PROPOSALS BY ELWa**

**24** These are detailed in section 113A (4) and in Regulation 3. In summary they are:

- the establishment by the LEA of a new community, community special, foundation or foundation special school which is a 16-19 institution;
- the closure of an existing maintained school which is a 16-19 institution;
- the enlargement of the premises of a 16-19 institution where this would increase the capacity of the institution by more than 25%.
- the enlargement of the premises of a school where this would increase the capacity of the sixth form by more than 25%, to be calculated as set out in The Education (School Organisation Proposals) (Wales) Regulations 1999<sup>1</sup>

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<sup>1</sup> Statutory Instrument 1999 No. 1671.

- the addition or removal of a sixth form; and
- a change in the age range of a sixth form by a year or more.

## **KEY CONSIDERATIONS**

**25** Where ELWa is considering publishing statutory proposals the Minister expects all relevant issues to be fully considered. Key considerations will be:

- the effect of any proposed change on the standard of education and quality of pastoral care to be provided in the area including the impact on the school or schools named in the proposals, other post-16 provision in the locality, and the impact on pre-16 provision, such as feeder schools;
- the need for the particular type of provision that is proposed;
- the effect of the proposed change on the proportion and availability of denominational places in the area when taken with any other related changes [taking into account the fact that denominational schools may have a proportionately larger catchment area than schools without such a character];
- the effect on the proposed change on the remaining school [if it entails closure of a sixth form or removal of a year group];
- the cost-effectiveness of proposals and whether adequate capital and recurrent funds are available to implement the proposals;
- the views of those most directly affected by the proposals such as the LEA, schools the subject of proposals, parents, young people and other schools in the area;
- the need for LEAs to comply with their duties under the Sex Discrimination Act 1975, including those provisions relating to single-sex schools;
- equal opportunities issues including meeting the needs of pupils with special needs;
- the effect of the proposed change on journey times to school and the availability of safe travel routes;
- the effect of the proposed change on accessibility to schools or other educational provision, particularly in the case of rural schools or other rural provision;
- the extent to which the proposals would foster collaborative arrangements between providers;
- the impact upon Welsh-medium provision and, in particular, contribution towards the objectives set out in Iaith Pawb and ELWa's own bilingual
- other local options for provision for students aged 16+ and
- the impact of the proposals on learning pathways and opportunities for progression for students aged 16-19.

## STATEMENT OF CASE

**26** Where proposals are not prompted by an ESTYN area inspection report, ELWa should undertake a detailed needs analysis or a provider review prior to bringing forward reorganisation proposals. These should provide ELWa with clear, robust and independent evidence of need when bringing forward proposals, and ensure that the process is transparent and open. ELWa will need to make this evidence publicly available to those who request it. In identifying areas to be the subject of proposals, ELWa should be receptive to proposals and analyses of need from third parties, such as LEAs and CCETs.

**27** In making a case, ELWa should:

- consider publishing a preliminary analysis of the adequacy of local post-16 provision and weaknesses which need to be addressed;
- consider all the options for addressing these that would include alternatives to institutional re-organisation, for example, encouraging more collaborative working between schools with sixth forms and the FE sector;
- encourage engagement by all parties in their local CCET. [In addition, ELWa may also consider putting in place mechanisms to foster collaborative working and sharing of good practice, for example setting up local networks or forums for schools and colleges to meet termly to discuss issues. However, these should be linked, wherever possible, to the local CCET.];
- in developing proposals, take account of the impact the proposals will have on a range of issues related to the quality, sufficiency and take-up of local provision, as set out in para. 27 above;
- publish, alongside the proposals themselves, an analysis of their impact; and
- make these available for viewing at the relevant ELWa regional office. Copies should be sent to all those consulted in drawing up the proposals and ELWa should ask for their comments.

**28** ELWa should also take account of the interests of groups such as local young people, those with Special Educational Needs, and employers and other educational providers in the area. ELWa should also take account of planning tools such as Educational Strategic Plans, School Organisation Plans, Welsh Education Schemes, local reviews of arrangements for special educational provision, and any Asset Management Plan.

## PRELIMINARY CONSULTATION

**29** Regulation 4 requires ELWa to consult such persons as it considers appropriate before making proposals, setting out the reasoning leading to the proposal and setting out the evidence supporting it. The purpose of the consultation is to allow different options to be discussed prior to publication of the final proposals within a framework of local consultation. In undertaking this

consultation ELWa should allow adequate time, and provide sufficient information for those being consulted to form a considered view on the matters on which they are being consulted, and should make clear what the procedure is for responding to the consultation to ensure that their views are known. Further guidance on this is given below.

**30** When consulting upon changes that would impact upon foundation, voluntary aided or voluntary controlled, denominational and welsh-medium schools, ELWa should undertake a wide consultation that takes into account that such schools may have a wider than normal catchment area.

**31** As noted at paragraph 9 above, ELWa should work closely with the Local Education Authority and consult them, and relevant governing bodies, at an early stage. Preliminary consultation on issues impacting upon schools should not take place predominantly within the school holidays.

**32** In its consultation ELWa should describe the proposals in respect of a sixth form (e.g. opening, closing or other alteration); the factors which led it to consider reorganisation; and the evidence which underpins the proposals. ELWa should also include in the consultation document other information which it considers is necessary for an effective consultation. The consultation document should contain sufficient information for those concerned to form a considered view on the proposals and should include all the options which ELWa is considering.

**33** The consultation document must state when the consultation period will end and where comments should be sent together with a named contact. ELWa should provide for a reasonable consultation period of not less than **two months** from the publication of the consultation document. If ELWa proposes to publish the results of the consultation it should inform respondents that their response could be made publicly available on request unless they state otherwise on their forms or letters. ELWa should provide a summary of responses to the National Assembly for Wales and should make available to any person on request a summary of the comments received in response to their consultation.

**34** ELWa should send a copy of any consultation document to the following:

- Schools Management Division 3, Welsh Assembly Government;
- the governing body of the school the subject of any consultative proposals (except where the proposals are to establish a new 16 to 19 institution);
- the local education authority who maintains, or (in the case of proposals to establish a 16 to 19 institution) which it is proposed should maintain, any school the subject of any consultative proposals;
- any adjoining local education authority or other local education authority whom ELWa considers is likely to be affected by any consultative proposals;
- the governing body of any other maintained school (including a pre-16 school), which ELWa considers is likely to be affected by any consultative proposals;

- the governing body of any further education institution which ELWa considers is likely to be affected by consultative proposals;
- the Diocesan Board of Education for any diocese of the Church in Wales, and the Bishop of any Roman Catholic Church diocese, which is comprised in the area of the LEA which maintains or are proposed to maintain the school or institution which appears to ELWa to be affected by any consultative proposals;
- the local CCET or CCETs;
- teaching unions or relevant professional bodies;
- the relevant 14-19 Network; and
- such other persons as ELWa considers appropriate, such as, in the case of a proposal with significant impact upon Welsh-medium provision, the Welsh Language Board. Where documents are sent to governing bodies, ELWa should consider sending additional copies for the attention of headteachers or principals.

**35** ELWa should foster close and effective working relationships with schools, LEAs and other interest groups in particular by engagement with the relevant local CCET. In addition ELWa must consult LEAs and should work as closely as possible with them in drawing up proposals for re-organisations. Where it seems appropriate ELWa may consider setting up local forums or networks in the relevant area in order to facilitate consideration of the proposals. However these should be linked to the local CCET. ELWa should also consider inviting local representatives from schools, LEAs and denominational groups to give their views on their initial proposals. ELWa should also make provision to consult parents, teachers, local employers and young people in the area who may be affected by the proposals, such as by issuing questionnaires or by holding a public meeting to hear views on its initial proposals.

#### **PUBLICATION OF PRELIMINARY CONSULTATION DOCUMENTS**

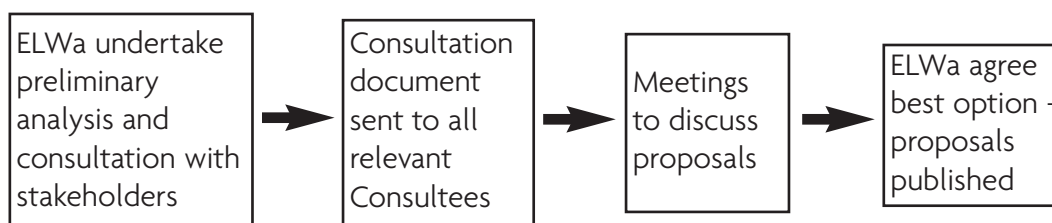
**36** In undertaking its preliminary consultation ELWa will wish to take account of the regimen for publishing final proposals, as detailed in regulation 5.

**37** In any consultation, ELWa should give consideration to making it as easy as possible for respondents to engage with the process, e.g. by issuing documents both electronically and in hard copy, and by making facility for responses to be made electronically.

#### **PLACE OF PRELIMINARY CONSULTATION IN THE PROCESS**

**38** ELWa should be able to demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals. Where, in the course of consultation, a new option emerges which ELWa wishes to consider, it will probably be appropriate to consult afresh on this option before proceeding to publish proposals. The process from launching consultation to actual publication should not usually take more than a year.

### Flowchart – Consultation Process



### PUBLICATION OF FINAL PROPOSALS

**39** ELWa is required to send copies of the final published proposals to those listed at regulations 5(4) or 5(5) [as is appropriate], and should also send copies to those listed at paragraph 34 above.

**40** In the case of proposals concerning special schools, copies of the notice of the proposals must also be sent to the parents of all registered pupils over compulsory school age if their names and addresses are available to ELWa and to certain health bodies. Parents of students with statements of SEN in mainstream schools should likewise receive a notification.

**41** The publication of proposals should be so timed to ensure that the objection period does not fall substantially within school holidays. Again, ELWa should give consideration to making it as easy as possible for respondents to engage with the process, e.g. by making copies of the final proposals available both electronically and in hard copy, and by making facility for objections to be registered electronically.

### OBJECTIONS TO FINAL PROPOSALS

**42** Once proposals are published there will be a statutory **two months** objection period during which objections must be sent to an address to be provided by ELWa and published as set out in regulation 6. All such objections should be in writing and sent to the address stated. In the interests of fairness, ELWa should also forward any late objections to Schools Management Division 3, provided that these are dated as having been sent within the objection period.

### SUBMISSION OF PROPOSALS TO NATIONAL ASSEMBLY FOR WALES

**43** ELWa should submit objections other than those withdrawn in writing to Schools Management Division 3 within **one month** of the end of the objection period, together with their comments thereon. These objections should be made publicly available on request, unless the respondent has stated otherwise. ELWa should let respondents know in all cases that their objections may be made public unless they specify otherwise.

**44** In addition, ELWa must send to the National Assembly the information specified in schedule 3.

**45** Where, in the light of objections to the published proposals ELWa considers that the proposals should be modified, it is open to ELWa to make this suggestion to the Assembly so that the Minister can consider whether to exercise her powers to approve the proposals with modifications.

#### **WITHDRAWAL OF PROPOSALS BY ELWa**

**46** Regulation 8 allows ELWa to withdraw its proposals at any time prior to a decision by the Minister for Education and Lifelong Learning.

#### **DECISION BY THE NATIONAL ASSEMBLY FOR WALES**

**47** The Minister for Education and Lifelong Learning under the powers delegated to her by National Assembly for Wales may decide under section 113A(5) to:

- approve the proposals without modification;
- reject the proposals;
- approve the proposals with modifications (with the consent of ELWa and others); or
- give a conditional approval. A conditional approval may be appropriate for example where implementation depends on ELWa obtaining planning permission, or acquiring a site.

**48** Schedule 3 to the regulations, in its sections, sets out the minimum information which the Minister will need in order to take a decision on the various proposals which may come before her. In addition, the Assembly officials may seek such further information as they see fit, over and above the requirements set out above, from ELWa, LEAs or school governing bodies, at any time prior to making a decision. The Minister may also seek advice from Estyn on the proposals.

**49** The Minister's decision will be set out in a letter which identifies the factors taken into account in reaching the decision and give reasons for that decision. The Department will despatch letters to all relevant parties as set out in regulations 9(1) and 9(2). The Minister's decision is final and there is no right of appeal by ELWa.

#### **Proposals without objections**

**50** Proposals that are published by ELWa will be decided by the National Assembly for Wales within **four months** from date of publication, provided there are no objections and ELWa provides all the necessary information to the Assembly within one month of the end of the objection period.



## **Proposals with objections**

**51** Where proposals published by ELWa attract objections, ELWa is required to forward the objections to the Assembly, together with their comments on the objections, within one month of the end of the objection period. A decision will be made **within six months**.

## **IMPLEMENTATION OF PROPOSALS**

**52** Once statutory proposals have been approved by the Minister for Education and Lifelong Learning there will be a statutory duty on the LEA or governing body to implement the proposals under Schedule 7A of the Learning and Skills Act. These should be implemented on the date specified (or as modified). The LEA or school governing body (as appropriate) would be required to implement the approved proposals. However, where the circumstances change and the Minister is satisfied that it would be unreasonably difficult, or that circumstances have altered since approval was given so that implementation would be inappropriate, she may determine that the duty to implement the proposals should not apply. Before making any such determination the Assembly is required to consult ELWa, the LEA and the governing body of any school affected.

**53** The Minister may also modify any statutory proposals which have been approved at the request of ELWa, for example, modification of the implementation date.

## **OTHER CONSIDERATIONS BY ELWa PRIOR TO PUBLICATION OF PROPOSALS**

### **Proposals by LEAs or Governing Bodies impacting upon ELWa proposals**

**54** LEAs and governing bodies should consult ELWa upon, and keep ELWa informed of, any reorganisation proposals which could have an impact on post-16 provision in an area. LEAs can make decisions on reorganisation proposals where there are no objections. However, where such decisions could impact on ELWa proposals then in such cases the LEA must refrain from making a decision until such time as the Minister has made a decision on the ELWa proposals. In the event of LEAs or governing bodies publishing proposals which impact on local provision in such a way as to conflict with ELWa proposals the Minister will consider both proposals at the same time, calling in the LEA proposals if necessary.

### **Capital Funding and Other Costs**

**55** Where the proposals require capital funding or incur other costs, it is ELWa's responsibility to identify where this funding is to be sourced from and to gain assent for the use of this funding from the parties concerned, including holding early stage discussions with the relevant LEA or LEAs on the availability of capital resources. ELWa must satisfy itself that adequate financial resources are available to enable the proposals to be implemented if they are approved. When proposals are first published ELWa must provide the Assembly with information on the capital costs of the proposals, together with any exceptional costs, and

how the costs are to be met. ELWa will also need to take account of recurrent costs, and the impact on both ELWa's budgetary position and on that of the LEA or governing body upon whom would fall the responsibility of maintaining the school. Generally, it may be helpful for ELWa to ensure that the likely costs of the proposals are stated in the published proposals, particularly where it is proposing to open a new 16-19 institution.

### **Admissions**

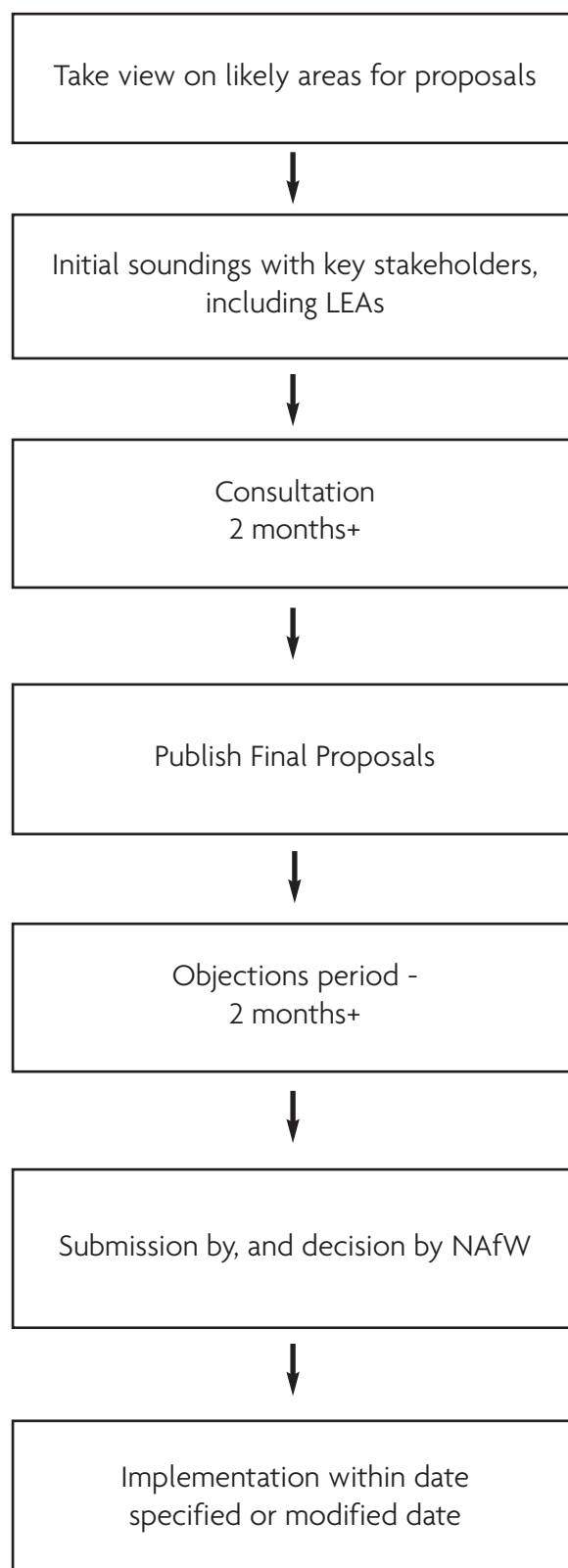
**56** ELWa will need to take into account planned admission levels in an area since different institutions operate different admissions policies from open to selective. The different admission policies could adversely impact on the type of provision and standards being achieved by schools which operated an open policy. ELWa should involve LEAs, schools and colleges in an open and detailed discussion on current post-16 provision in its area in order to get a wider picture.

### **Transport**

**57** ELWa will need to ensure it has all the relevant information when making proposals and should seek to involve LEAs at an early stage particularly in addressing transport issues. The availability or otherwise of transport could impact on pupil participation and retention rates, since some students would not want to travel far to a college, whereas most 6th forms serve a local area. Also for cultural or religious reasons some parents may not want their children to go far from home or into a mixed sex environment such as a college. All these views should be considered during the consultation stage.

## ANNEX A: PROCEDURES FOR PUBLISHING STATUTORY PROPOSALS

Please note that there may be variations to this model and in all cases it would be for ELWa to decide whether or not to proceed with their proposals. ELWa may withdraw proposals at any time prior to the National Assembly for Wales's final decision.



## ANNEX B1

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE ESTABLISHMENT OF A 16-19 INSTITUTION

##### [ Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes the establishment by [name of LEA] of a new [community/community special] 16-19 institution for [number] of [male and/or female] pupils between the ages of 16-19 from [date].

The new school is to be situated [location of the site, including, where appropriate, the postal address].

The proposed arrangements for transport of pupils to the new school are, [if any [ ]].

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to these proposals.

Objections should be submitted in writing to the National Council for Education and Training at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales, copies of any objections made (and not withdrawn in writing), together with their comments on them together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[An Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B2

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE DISCONTINUANCE OF A 16-19 INSTITUTION

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes the discontinuance of [name and address of sixth form school] from [date].

It is proposed that the sixth form pupils will be able to attend [insert details of alternative schools which pupils will be able to attend, including any interim arrangements]. Admission may also be sought to other schools which may have places available. [Also give details of any other measures proposed to be taken to increase the number of school places available in consequence of the proposed discontinuance.]

[The proposed transport arrangements are, [if any,]].

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to these proposals.

Objections should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

Within one month, after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales, copies of any objections made (and not withdrawn in writing) together with their comments on them together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B3

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE OPENING OF A SIXTH FORM PROVISION

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes the establishment of a new sixth form for [number] of [male and/or female] pupils between the ages of 16-19 at xx [community/foundation/voluntary aided/voluntary controlled] school from [date].

The new sixth form is to be situated [location of the site, including, where appropriate, the postal address].

The proposed arrangements for transport of pupils to the new sixth form are, [if any [ ]].

[In the case of a foundation or voluntary controlled sixth form, state whether the proposals are to be implemented by the LEA or by the governing body, and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each body, or both and explain the extent to which each will meet the necessary capital and other costs or from where funding for these costs will otherwise be sourced.]

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to these proposals.

Objections should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on them together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B4

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE DISCONTINUANCE OF A SIXTH FORM PROVISION

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes the discontinuance of sixth form provision at xx [community/foundation/voluntary controlled/voluntary aided] school from [date].

It is proposed that the sixth form pupils will be able to attend [insert details of alternative schools which pupils will be able to attend, including any interim arrangements] Admission may also be sought to other schools which may have places available. [Also give details of any other measures proposed to be taken to increase the number of school places available in consequence of the proposed discontinuance.]

The proposed transport arrangements are, [if any [ ]].

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to these proposals.

Objections should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on those objections together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]



## ANNEX B5

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE ENLARGEMENT OF A SIXTH FORM PROVISION

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes an increase in the sixth form provision at [community/foundation/voluntary controlled/voluntary aided] school by an enlargement of the premises of the school from [date].

The number of pupils at the sixth form school is [ ]. The current capacity of the sixth form is [ ].

The proposed capacity of the sixth form is to be [ ].

[In the case of a foundation or voluntary controlled sixth form, state whether the proposals are to be implemented by the LEA or by the governing body, and, if the proposals are to be implemented by both, the extent to which they are to be implemented by each body and explain the extent to which each will meet the necessary capital and other costs or from where funding for these costs will otherwise be sourced.]

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to these proposals.

Objections should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on those objections, together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B6

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE OTHER PRESCRIBED ALTERATIONS TO A SIXTH FORM PROVISION

[Address]

Notice is hereby given in accordance with section 113A(3)(b) of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes [describe the alteration; refer to regulation 3 of the *School Organisation Proposals by National Council for Education and Training for Wales Regulations 2004* for alterations for which proposals can be published] to xx [community/foundation] school.

It is proposed [details of the intended change, and the date or dates that it is to be implemented].

[In the case of a foundation or a voluntary controlled sixth form, state whether the proposals will be implemented by either the Local Education Authority or the Governing Body, or both, and explain the extent to which each will meet the necessary capital or other costs or from where funding for these costs will otherwise be sourced.]

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to or comment on these proposals.

Objections and comments should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on those objections together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B7

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE A PRESCRIBED ALTERATION TO SIXTH FORM PROVISION IN A COMMUNITY OR FOUNDATION SPECIAL SCHOOL

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes [describe the alteration; refer to regulation 3 of the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004 for changes for which proposals can be published] at xx [community/foundation] special school with effect from [proposed implementation date, or where proposals are planned to be implemented in stages, the date on which each stage is planned to be implemented].

[In the case of a foundation special school, state whether the proposals will be implemented by either the Local Education Authority or the Governing Body, or both, and explain the extent to which each will meet the necessary capital or other costs or from where funding for these costs will otherwise be sourced.]

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to or comment on these proposals.

Objections and comments should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on those objections together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]

## ANNEX B8

### EXAMPLE OF A STATUTORY NOTICE

#### TO PROPOSE THE DISCONTINUANCE OF SIXTH FORM PROVISION IN A COMMUNITY OR FOUNDATION SPECIAL SCHOOL

[Address]

Notice is hereby given in accordance with section 113A of the Learning and Skills Act 2000 that the National Council for Education and Training for Wales proposes the discontinuance of the sixth form provision at xx [community/foundation] special school with effect from [proposed implementation date].

The school caters for [number of pupils] [sex of pupils] aged between [age range] with [type of SEN].

It is proposed that pupils will [insert details of alternative schools which pupils will be able to attend, including any interim arrangements]. Admission may also be sought to other schools which have places available. [Insert details of any other measures proposed by ELWa to increase the number of sixth form available in consequence of the proposed discontinuance].

The proposed transport arrangements are [give details of proposed arrangements for transport to new schools].

Further details about these proposals can be obtained from [insert name and address of person or persons from whom further information can be obtained]. A preliminary consultation by the National Council for Education and Training for Wales was undertaken on [date] and a summary of the comments received in response to that consultation can also be obtained from that address.

Any person may object to or comment on these proposals.

Objections and comments should be submitted in writing to the National Council for Education and Training for Wales at [insert address] within two months from the date of publication of these proposals.

The proposals require the approval of the National Assembly for Wales. Within one month after the end of the period for making objections, the National Council for Education and Training for Wales will forward to the National Assembly for Wales copies of any objections made (and not withdrawn in writing) together with their comments on those objections together with such other information as is required by the National Assembly for Wales.

Signed [Name] for the National Council for Education and Training for Wales

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and filling out the details may be given here if needed.]