



Transition from an Interim Executive Board

The School Governance (Transition from an Interim Executive Board) (Wales)
Regulations 2008

Consultation

Consultation document No: 038-07

Date of issue: 13 July 2007

Action required: Responses by 12 October 2007

- Title of Document:** Consultation on 'The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2008'
- Audience:** All Local Education Authorities, governing bodies and headteachers of schools, teaching unions and school representative bodies, church diocesan authorities, Welsh Language Board, Children's Commissioner for Wales and local and national bodies with an interest in education.
- Overview:** The Education Act 2002 gives local education authorities and Welsh Ministers powers to provide for a school governing body to be replaced by an Interim Executive Board (IEB) where, following inspection, Estyn has identified the school as requiring "special measures" or "significant improvement"; these powers are planned to be commenced in Wales from January 2008. The Act also provides that arrangements for the transition from an Interim Executive Board back to a normally constituted governing body may be prescribed in Regulations made by Welsh Ministers. This document consults on these Regulations.
- Action required:** **The deadline for submission of comments to this consultation is 12 October 2007.** Responses should be made on the accompanying proforma (published separately as a PDF doc on www.new.wales.gov.uk/educationandskills) and may be returned in hard copy to the address below, or sent electronically (please enter "Transition from an Interim Executive Board Regulations" in the subject box) to: SPD3consultations@wales.gsi.gov.uk
- Further information:** Further information about this consultation can be obtained from:
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The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2008.

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Consultation on 'The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2008'

Summary

Sections 57 and 58 of the Education Act 2002 (the Act) amend the School Standards and Framework Act 1998 to give local education authorities and Welsh Ministers powers to provide for a school governing body to consist of Interim Executive Members (IEMs) where, following inspection, Estyn has identified the school as requiring "special measures" or "significant improvement"; these powers are planned to be commenced in Wales from January 2008. The powers to appoint IEMs are intended to be used in circumstances where a governing body is judged to be incapable of improving performance and turning a school around even with support.

The Interim Executive Members will constitute an Interim Executive Board (IEB). An IEB is a small focussed group which will act as the governing body of the school for the time it is in office and should remain in office till there are clear indications of recovery. Section 59 and schedule 6 to the Act set out the detail applying to governing bodies consisting of IEMs. In addition, paragraph 19 of schedule 6 provides that arrangements for the transition of the IEB back to a normally constituted governing body may be as prescribed in Regulations made by Welsh Ministers.

This document sets out the arrangements for ensuring the smooth transition from an IEB back to a normally constituted governing body and invites views on the approach proposed.

The consultation period ends on 12 October 2007. Responses to be sent to SPD3consultations@wales.gsi.gov.uk or returned in hard copy. It should be noted that the responses to the consultation will be made public. Normally, the name and address (or part of that address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

SECTION 1: BACKGROUND

Schools Causing Concern – powers of intervention

1. Under s28 of the Education Act 2005 the Chief Inspector for Education and Training in Wales has a duty to arrange for the regular inspection of schools; currently school inspection takes place on a six year cycle. The Chief Inspector is required to notify Welsh Ministers of schools judged at the end of inspection as requiring “special measures” or “significant improvement” as defined by s44 of the 2005 Act. Estyn also has a duty to notify the appropriate Local Education Authority.
2. It is envisaged that in most instances recovery will be facilitated by the school working in partnership with the local education authority. To support this Local Education Authorities have powers to appoint additional governors to a school and also to suspend the school’s right to a delegated budget under sections 14-17 of the School Standards and Framework Act 1998, as amended by the Education Act 2002 and the Education Act 2005.
3. Welsh Ministers also have powers to appoint additional governors, nominate one of them to be the Chair in place of the elected Chair and determine their period of appointment (s18 and 19 of the School Standards and Framework Act , as amended the Education Act 2002 and the Education Act 2005). In the case of a school judged to require special measures Welsh Ministers also have powers to direct a Local Education Authority to close the school (s.19 of the School Standards and Framework Act, as amended by the Education Act 2005).
4. As a first step in recovery the school in partnership with the local education authority develops an action plan to address the areas for improvement identified by Estyn. The Local Education Authority also provides a statement of the support that will be made available to the school. Estyn is charged with monitoring progress and most schools are no longer considered to require significant improvement, or are withdrawn from special measures, within 2 years. If after two years Estyn reports unsatisfactory progress further consideration is given to exercising the powers of intervention held by both local education authorities and Welsh Ministers.

Education Act 2002 - Additional powers of intervention

5. It is planned that the provisions at Sections 57 and 58 of the Education Act 2002 will be commenced from January 2008. Sections 57 and 58 of the Education Act 2002 insert sections 16A and 18A to the School Standards and Framework Act 1998 giving new powers for local education authorities and Welsh Ministers to provide for a school governing body to consist of Interim Executive Members (IEMs) where, following inspection, Estyn has identified the school as requiring “special measures” or “significant improvement”. Section 59 and Schedule 6 to the Education Act 2002 insert section 19A and Schedule

1A into the School Standards and Framework Act 1998 and set out the detail applying to governing bodies consisting of IEMs.

6. It is intended that the commencement of these additional powers will enable LEAs and Welsh Ministers to support school improvement where there is evidence that the governing body is not able to secure improvement in the quality of education and the standards achieved by learners even with additional support.

Role and expected duration of an Interim Executive Board.

7. Schedule 1A to the School Standards and Framework Act 1998 (as inserted by section 59 and Schedule 6 to the Education Act 2002) set out the detail applying to governing bodies consisting of Interim Executive Members. In summary, an Interim Executive Board may be appointed to a school that requires “special measures” or “significant improvement” following an inspection by Estyn. An Interim Executive Board may also be appointed where a school governing body has failed to comply with a warning notice issued by a local education authority under Section 15 of the School Standard and Framework Act 1998.

8. The appointment of an Interim Executive Board by a Local Education Authority requires the approval of Welsh Ministers and it is envisaged that such approval will be given where there is clear evidence that the existing Governing Body is incapable of securing significant improvement in the quality of education and the standards achieved by learners even with additional support. The Local Education Authority would also be required to consult the school’s governing body and in the case of a foundation or voluntary controlled school the Diocese or other appropriate authority. Similarly Welsh Ministers would be required to consult with specified bodies before appointing an Interim Executive Board.

9. An Interim Executive Board would be appointed for the full period required to address the areas for improvement identified by Estyn. The Board would take on all of the responsibilities of a governing body with regard to the conduct of the school, including management of the budget, the curriculum, staffing, pay and performance management and the appointment of the head and deputy head teacher. The Interim Executive Board would also be required to discharge any wider duties imposed on governing bodies. For example this would include a duty to take account of the work/life balance of the head teacher.

Regulations.

10. The powers in the primary legislation once commenced in January 2008 will enable Local Education Authorities or Welsh Ministers to put an Interim Executive Board in place. However, new regulations are required to make provision for the discontinuance of the Interim Executive Board and the transition to the school being governed by a

normally constituted governing body. These Regulations cover that process and are intended to make the transition as smooth as possible.

The Acts mentioned in this document can be accessed through the attached link <http://www.opsi.gov.uk/>

SECTION 2: The proposed arrangements for the transition of the IEB back to a normally constituted governing body.

10. To promote continuity and a smooth transfer of functions it is proposed to provide for the appointment of a shadow governing body, initially to work alongside the Interim Executive Board for at least 6 months and to later act alone once the IEB has been wound up. The shadow governing body would eventually be replaced by a permanent normally constituted governing body in accordance with arrangements set out in the Government of Maintained Schools (Wales) Regulations 2005 within 13 months of the IEB being disbanded.

11. The shadow governing body would be appointed by the Local Education Authority after consulting with all those normally entitled to make governing body appointments [regulation 5]. The proposed composition of the governing body is set out in regulations 6-12 for the different categories of schools and mirrors the arrangements for a normally constituted governing body as outlined in the Government of Maintained Schools (Wales) Regulations 2005. It is intended that this will support continuity when the normally constituted governing body takes over and the shadow governing body ceases to exist.

12. There is a facility for any or all IEB members to be appointed to the shadow governing body [regulation 5(3)] and for an IEB member to be elected as the Chair or Vice Chair of the shadow governing body [regulation 13(2)]. Regulation 5 (1) proposes that the two bodies would run in parallel for at least six months prior to the disbanding of the IEB. During this period the IEB could delegate specific functions to the shadow governing body.

13. It is proposed that election of the chair and vice-chair of the shadow governing body be made at the first meeting and be elected from their number [regulation 13]. Responsibility for appointing the clerk of the shadow governing body would rest with the LEA [regulation 14]. It is intended that the shadow governing body would have responsibility for determining its own procedure [regulation 15] subject to provisions in regulations 17 & 18 relating to the availability for inspection at the school of the agenda for meetings, reports considered at meetings and the minutes of proceedings.

14. Under regulation 19, it is proposed that as soon as the Interim Executive Members cease to hold office the shadow governing body would be treated as the normally constituted governing body. According to regulation 3, the provisions of the Government of Maintained Schools (Wales) Regulations 2005 would not apply to a shadow governing body when running alongside the Interim Executive Board. The Regulations make provision for matters such as the categories of governors, their qualifications, their term of office, the constitution of a governing body, its proceedings. However once the Interim Executive Members cease to hold office Part 5 of the

Regulations would apply. Part 5 makes provision in relation to the school's instrument of government. This would enable the shadow governing body and the LEA to review the school's instrument of government if it is considered necessary. The full raft of normal governance regulations would apply when the permanent fully constituted governing body is established under an instrument of government on a date determined by the LEA, and subject to one term's notice.

15. The date proposed for the LEA to establish the normally constituted governing body is no later than 13 months from the date on which the Interim Executive Board is formally discontinued [regulation 20].

Guidance

16. It is planned that advice on the appointment of IEBs, and on their discontinuance, will be included in the new "Schools Causing Concern" guidance currently being prepared by the Assembly Government for issue to LEAs and Schools in Spring 2008; the guidance will also be available on the Assembly Government's website www.new.wales.gov.uk/educationandskills. When issued this guidance will replace Welsh Assembly Government Circular 28/03 advising LEAs and schools on the process to be followed in the event of a school being judged by Estyn as requiring special measures or in need of significant improvement.

17. It is proposed that The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2008 will come into force from 1 January 2008. A copy of the draft Regulations is at Annex A.

Q.1 Do you agree that a shadow governing body should be established before an IEB steps down? (As set out in regulation 5)

Q.2 Do you agree that the composition of a shadow governing body should mirror as closely as possible the structure of a normally constituted governing body? (As set out in regulations 6 to 12)

Q.3 Do you agree with the proposed arrangements for the appointment of the Chair, Vice-Chair and clerk to the shadow governing body and minuting of meetings? (As set out in regulations 13, 14, 17 and 18)

Q.4 Do you agree that it is appropriate for the shadow governing body to determine its own proceedings and exercise any functions delegated to them by the IEB? (As set out in regulations 15 and 16)

Q.5 Do you agree that the certain statutory provisions within The Government of Maintained Schools (Wales) Regulations 2005 should not apply to a shadow governing body nor a school's instrument of

government in so far as it relates to the constitution of a shadow governing body? (As set out in regulation 3)

Q.6 Do you agree the procedure for the transition from a shadow governing body to a normally constituted governing body ?

(As set out in regulation 19 and 20)

Q.7 Do you have any other comments on the proposals set out in the regulations that you wish noted in response to this consultation?

ANNEX A