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## Consultation – summary of responses

### Schools causing concern: draft statutory guidance to local authorities

Date of issue: February 2014

# Schools causing concern: draft statutory guidance to local authorities

<b>Audience</b>	Chief executives and directors of education in county and county borough councils in Wales; diocesan authorities; headteachers and governing bodies of maintained schools in Wales; teacher associations and other national and local bodies concerned with education in Wales.
<b>Overview</b>	This document provides a summary of responses to the consultation on Schools causing concern: draft statutory guidance to local authorities.
<b>Action required</b>	None – for information only.
<b>Further information</b>	Enquiries about this document should be directed to: Schools Management and Effectiveness Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: <a href="mailto:SMED1@wales.gsi.gov.uk">SMED1@wales.gsi.gov.uk</a>
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/consultations">www.wales.gov.uk/consultations</a>
<b>Related documents</b>	<i>Schools causing concern: Draft guidance for schools and local authorities (2013)</i>

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## Introduction

The consultation period ran from 4 March 2013 to 29 April 2013. This report is based on 15 responses to the consultation.

The responses received were from five teaching unions, three local authorities, a Consortium, an Education Advisory Service, Catholic Education Service, a school, WLGA, Governors Wales and one other.

The consultation sought views on draft statutory guidance to local authorities (LA) on schools causing concern. The guidance provides information to LAs on the new legislative requirements for intervening in schools causing concern provided for in the School Standards and Organisation (Wales) Act 2013. It also sets out the approach the Welsh Ministers will take in exercising their own intervention and consent functions.

The consultation was conducted electronically and was drawn to the attention of LAs, diocesan authorities, headteachers and governing bodies of maintained schools in Wales, teacher associations and other national and local bodies concerned with education in Wales.

Prior to the consultation the draft guidance was shared with the following key stakeholders – Estyn, WLGA, Directors of Education, Diocesan Authorities, Governors Wales and the Charities Commission.

The report starts with a background, followed by an overview and then a summary analysis of each question within the consultation. A copy of the consultation can be accessed at:

<http://wales.gov.uk/consultations/education/schools-causing-concern-draft-statutory-guidance-to-local-authorities/?lang=en>

## Background

The School Standards and Organisation (Wales) Act 2013 was passed by the National Assembly for Wales on 15 January 2013 and received Royal Assent on 4 March 2013.

Chapter 1 of part 2 of the Act relates to intervention by LAs and Welsh Ministers in schools causing concern. Many of the provisions in Chapter 1 of part 2 of the Act are re-enactments of previous legislation, but there have been changes to ensure that fewer schools become a cause for concern. Section 20 of the Act includes a new power for Welsh Ministers to issue statutory guidance to LAs in relation to intervention in schools causing concern.

The statutory guidance will assist LAs when they are considering using their powers to intervene in schools causing concern. The provisions in the Act and accompanying statutory guidance aim to ensure that local authorities are clear about their powers of intervention and those of Welsh Ministers and that they use their powers decisively and effectively to bring about the rapid improvement of underperforming schools. These provisions form part of the Minister for Education and Skills' concerted programme of action to raise school standards in Wales.

The reforms in the Act respond to concerns that in many LAs a few schools have been allowed to underperform over a long period of time, mainly because authorities do not use the full range of their powers to improve schools quickly enough. Evidence suggests that very few LAs have issued warning notices in such circumstances. Informal consultation with LAs suggested that the law as it stood was unclear and the criteria for issuing warning notices dissuaded them from issuing them sufficiently early. The School Standards and Organisation (Wales) Act 2013 consolidates, clarifies and reforms the law in relating to intervention in schools causing concern and includes a new power for Welsh Ministers to issue statutory guidance to local authorities in this regard.

The statutory guidance sets out clearly the procedures to be followed by LAs in ensuring that schools causing concern make the necessary changes as early as possible.

## Overview of consultation responses

Fifteen responses were received to the consultation. The majority of respondents agreed with the structure, style and tone of the guidance. The majority of respondents agreed that the guidance was clear describing when a school is eligible for intervention, the grounds that determine intervention, issuing of warning notices and the local authority's and Welsh Minister's powers and types of intervention. The majority of respondents agreed that the guidance was clear regarding schools in Significant Improvement or Special Measures and the action to be taken. Some of the comments made have been taken on board and the guidance revised accordingly.

The questions posed, the main points raised and Welsh Government's responses to them are set out below.

### **Q1. Do you agree with the structure, style and tone of the draft statutory guidance? If not, in what way?**

Eight respondents agreed, four did not provide specific comments to the question posed, whilst others provided the following comments:

#### **Positive comments**

- Having a cohesive document is beneficial for schools and governing bodies to understand the process when schools need support in raising standards.
- The guidance provides a structured approach, which is clear and easy to access and understand. The tone is inoffensive and simply clarifies the legislation. Appreciate having all the associated legislation in one clear document.
- The guidance clearly outlines key roles and responsibilities for Ministers and local authorities to act decisively when standards are unacceptable and the need to work effectively with other bodies, e.g. Estyn and Diocesan authorities. Local authorities can be in no doubt there is an expectation from the Welsh Ministers to act decisively when educational standards are low or management is weak.
- Well presented with clear sections and headings throughout.
- NASUWT, in general, acknowledges that the guidance is well constructed and presents sufficient detail for LAs and Welsh Ministers to understand when it would be appropriate to issue a warning notice.

#### **Negative comments**

- The overall tone of the document is quite negative, particularly when referring to LAs.

- The NASUWT object strongly to the proclamations about underperformance contained in the introduction of the guidance. The need for issuing guidance should be based on fact rather than assumption. NASUWT questions the credibility of the claim in the introduction that in many LAs a few schools have been allowed to underperform over a long period of time.  
**Welsh Government Response – the statement referred to in the introduction is ‘In many local authorities, a few schools have been allowed to underperform over a long period of time, mainly because authorities do not use the full range of their powers to improve schools quickly enough’\*. This statement was lifted from the foreword of Estyn’s 2010-11 annual report and based on the findings of inspections. The statement will remain.**

### Suggestions

- The Guidance to emphasise the options open to LAs before formal intervention and that it is presumed that LAs will act and not be reluctant to do so.  
**Welsh Government Response – the guidance highlights in a number of places the role and responsibility of LAs regarding monitoring their schools systematically, supporting them and intervening where necessary - paragraph 33 explains that LAs should be monitoring the performance of their schools and paragraphs 39 and 40 suggests what LAs should do if they have concerns before considering a formal warning notice. Paragraph 2.1 states that ‘the expectation is that local authorities will act in the first instance’.**
- Appendices could include flow diagrams to show summary information.  
**Welsh Government Response – Annex 3 provides a flow chart on the process involved for schools requiring special measures or significant improvement.**
- NASUWT believes that the document could be improved by combining the second and third points of the introduction to read ‘The provisions in the Act and this accompanying statutory guidance provide a single point of reference for local authorities when they are considering using their powers to intervene in schools causing concern. They aim to ensure that local authorities are clear about their powers of intervention as evidence suggests that very few local authorities have issued warning notices in such circumstances.  
**Welsh Government Response – disagree. The paragraphs will remain as they are.**
- NASUWT welcomes clarity of paragraph 18.  
**Welsh Government Response – the paragraph is stating that the guidance is not legal advice. Local authorities should be familiar with the legislation the guidance relates to.**

\* This statement was made by the Chief Inspector of Education and Training in Wales in Estyn’s 2010/11 annual report.

## **Q2. Is the guidance clear on when a school is ‘eligible for intervention’?**

Ten respondents agreed, four did not provide specific comments to the question posed, whilst others provided the following comments:

### **Comments**

- Governors Wales believes that it is essential that schools/governing bodies receive relevant, timely, support and guidance to improve any shortcomings before any formal intervention and warning notices are instigated. The governing body must always be kept informed of any significant concerns and should be fully involved in the resolution process. Governors Wales is pleased to note the consultation will take place with the governing body/school prior to intervention.  
**Welsh Government Response – Agree and noted.**
- Appreciate an Appendix (on when a school is ‘eligible for intervention’) which could be copied/shared/displayed as an aide memoir for officers.  
**Welsh Government Response – the relevant information is contained in the summary at the beginning of the guidance.**
- NASUWT acknowledges that the guidance is clear when a school is deemed ‘eligible for intervention’ but has concerns over the reliance on Estyn inspection judgements, views and advice and questions the independence of the Welsh Inspectorate. NASUWT gives notice that Estyn, LAs and Welsh Ministers will be held to account for any decisions arising out of intervention that impacts adversely on the lives and livelihoods of teachers, school leaders and the wider school workforce, where such a decision is based on flawed and/or partial views, or where there has been a failure to follow due process in law.  
**Welsh Government Response – noted.**

## **Q3. Is the guidance clear on the types of information that might indicate the grounds for intervention exist?**

Ten respondents agreed, four did not provide specific comments to the question posed, whilst others provided the following comments:

- Examples given are useful.  
**Welsh Government Response – noted.**
- The NASUWT questions the punitive nature and thrust of the approach that lies behind the powers of intervention. The Union maintains that the credibility and standing of the guidance will be determined on how little the powers of intervention are used, rather than how often they are used.  
**Welsh Government Response – noted.**

- The 'Establishing the grounds' could be nearer the front of the document and the evidence for grounds 4,5 and 6 should be included as it is for grounds 1-3.

**Welsh Government Response – the section is located at the beginning of the document. Agree that evidence for grounds 4, 5 and 6 should be included, information will be added.**

#### **Q4. Is the guidance clear in respect of the issue of warning notices?**

Nine respondents agreed, four did not provide specific comments to the question posed, whilst others provided the following comments:

- Feedback/information should be given to the governing body/school in order to discuss the content of the warning notice.  
**Welsh Government Response – the warning notice is a formal stage in the intervention process. Governing bodies/schools would have had an opportunity before this stage to discuss matters with the local authority about the authority's concerns. The guidance highlights that discussion would take place. The warning notice will set out details and reasons for the intervention and the action the governing body is required to take.**
- This is a last resort but may be necessary in some circumstances. However at 1.2 we would add after 'refusing' the additional words of 'or unable to'.  
**Welsh Government Response – this is not necessary. If a school was unable to engage with the local authority for a particular reason, the local authority would need to resolve this issue before proceeding further.**
- At 1.15 we would urge that there should be some provision for support for improvement.  
**Welsh Government Response – the document does suggest that it is good practice for the local authority to provide guidance to governing bodies on how they might comply. However, we will add a line to paragraph 1.15 to state that LAs will continue to support the school to make improvements.**
- At 1.19 is there a need to be a stated time limit between original notice and subsequent inspection findings triggering automatic eligibility for intervention.  
**Welsh Government Response – no. If a school is found to be in special measures or significant improvement following inspection this supersedes the timeframe provided for the period of compliance within the LAs warning notice**
- A draft/exemplar letter in respect of a warning notice to a governing body would ensure more consistency across LAs.

**Welsh Government Response – it would not be appropriate to provide a draft warning notice. Warning notices are not generic and can be issued for a range of different reasons and would include timescales and actions specific to the circumstances of a particular school. Paragraph 1.13 of the guidance sets out the basis of the information that should be included in a warning notice.**

- Point 34 references direct observation of the quality of teaching as evidence to be used for action by the LA.

**Welsh Government Response – this is referred to in paragraph 39. In doing so, the LA would look at the full range of qualitative and quantitative information before deciding whether to intervene.**

- NASUWT has concerns that LAs will feel compelled to issue warning notices for fear of public criticism and denegation by the Welsh Ministers if a more supportive approach is taken. This concern is based on the suggestion that many local authorities have allowed some schools to underperform over a long period of time. Suggests that the WG appears to wear, as a badge of pride in itself, the number of LAs and schools that are deemed by Estyn to be failing. The NASUWT trusts that LAs will not adopt this approach to school accountability that only serves to undermine public confidence in the education system in Wales and lower the morale of teachers, school leaders and wider school workforce.

**Welsh Government Response – support should be there from the outset when a school is in difficulty. The overall objective is to ensure that pupils do not spend extended periods of time in schools causing concern. LAs have a statutory duty for monitoring and intervening where necessary where there are concerns about school standards. The LA should, in discussion with the schools governing body and senior management team, take prompt action to identify areas for improvement and agree appropriate action. If matters are not resolved, LAs will draw on a range of information and evidence on a schools performance to form a view of whether it is appropriate to issue a warning notice.**

**Q5. Is the guidance sufficiently clear regarding local authority powers and types of intervention, their purpose, the circumstances they are best used and the requirements which must be met before using those powers?**

Nine respondents agreed, four did not provide specific comments to the question posed whilst others provided the following comments:

- In the second sentence of paragraph 4.18 after ‘where the LA is the appropriate authority for the school’ there needs to be an insertion for clarity ‘(i.e. where the school does not have a delegated budget)’. This has been inserted in Annex 5, but should be in the main text as well.

**Welsh Government Response – agree this will be inserted.**

- Problems are not to do with clarity but capacity. Some LAs may not have the capacity to provide support. There must be stringent monitoring of the level and type of support that LAs are able to offer. The large number of LAs in special measures themselves shows that this must be addressed as a matter of urgency.  
**Welsh Government Response – noted. Consortia are helping with capacity issues. Interventions are being put in place to assist improvement in those LAs that are in special measures.**
- Section 39 to contain reference to local conditions and evidence from/views of parents and staff (as in 1.5).  
**Welsh Government Response – not needed here as further details of the quantitative and qualitative evidence available is covered in paragraphs 1.5 to 1.11.**
- Point 35 uses the term a measurable period. Is there any guidance on the length of this period or is it ‘at the local authority’s discretion? Will this be inconsistent across Wales?  
**Welsh Government Response –this is referred to in paragraph 40. This will be at the LA’s discretion. It very much depends on the nature of the concern. A range of factors will need to be considered before determining what a measurable period would be.**
- Point 2.25 states that ‘if the date when the IEB will cease work was not given in the notice of establishment, the LA must send a second notice to the shadow governing body specifying the date when the IEB will be discontinued’. The guidance could indicate how the shadow governing body is set up, how it links with the IEB as a handover etc.  
**Welsh Government Response – although there is further information on this issue within Annex 1 of the guidance, some narrative will be included in the body of the guidance.**

**Q6. Is the guidance clear on the approach Welsh Ministers will take in exercising their own intervention powers and consent functions?**

Eight respondents agreed, six did not provide specific comments to the question posed, whilst others provided the following comments:

- If a school is deemed to require significant improvement and has not been given a warning notice, when would intervention from Welsh Ministers start?  
**Welsh Government Response – there is no set timescale. It would depend on the ground for intervention and the type of intervention needed.**

- On what grounds would Welsh Ministers intervene, given Estyn will require a significant improvement in 12 months  
**Welsh Government Response – this is set out in paragraph 3.2. Welsh Ministers would only be expected to act in exceptional circumstances.**
- Alarmed that little thought appears to have been given to the devastating effect that the exercise of such powers could have on schools and their local communities that find themselves on the receiving end (refers to the intervention with Llanrumney High School).  
**Welsh Government Response – Welsh Ministers powers are for use only where an LA has failed to act or acted inadequately. These will be schools where Estyn has deemed in need of significant improvement or special measures. If the LA has failed to act or failed to do so adequately, there is likelihood that these schools will have been a cause for concern for some time. In determining whether a school is a cause for concern, Welsh Ministers would be expected to take into account the whole range of qualitative and quantitative evidence available.**

**Q7. Is the guidance clear regarding schools deemed to require significant improvement or special measures and the action to be taken by school governing bodies and local authorities?**

Nine respondents agreed, five did not provide specific comments to the question posed, whilst others provided the following comments:

- Schools and local authorities are conversant with Estyn’s categories and the actions required by the governing body and local authority.  
**Welsh Government Response – noted.**
- The NASUWT will hold school governing bodies and local authorities to account if the action taken following intervention fails to respect fully the contractual right and entitlements of teachers, is predicated on the exploitation of teachers, school leaders and the wider school workforce, or results in an increase in the incidence of workplace bullying and harassment.  
**Welsh Government Response – there are provisions in place to hold governing bodies and local authorities to account in Chapter 1 and 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 if the governing body or local authority is acting unreasonably in the exercise of an education function or failed to comply with a duty under the Education Acts. The local authority is a public body and as such is also subject to review by the courts if it acts unlawfully.**

**Q8. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please report them.**

Some respondents provided the following comments:

- Concern is that the document implies that Ministers have better judgement than the LA in terms of what is required for a school, for example, issuing a Warning notice or directing the closure of a school. Ministers should direct their concerns to the LA and not directly contact schools themselves. The decision should be taken by the LAs following consultation, they are best place to monitor and deal with schools. There is a possibility here of “political agendas” overshadowing “educational priorities”.

**Welsh Government Response – Welsh Ministers would expect local authorities to intervene in the first instance, they are responsible for schools in their area and should know their schools well. The provisions allow Welsh Ministers to intervene where local authorities have failed to intervene or done so inadequately and intervention is needed. Welsh Ministers will be required to act reasonably. The decisions of Welsh Ministers are subject to challenge before the courts if it is felt they have acted unreasonably and Assembly Members are able to scrutinise decisions of Welsh Ministers in the Assembly.**

- There are systems in place to monitor and assess LAs, what systems are in place to monitor and assess Ministers?  
**Welsh Government Response – Assembly Members can scrutinise decisions of Welsh Ministers in the Assembly. The decisions of Welsh Ministers are also subject to challenge before the courts if it is felt they have acted unreasonably. In all cases Welsh Ministers are expected to act reasonably in accordance with the Wednesbury rules.**
- Concerns about the potential capacity issues in Local Authorities/ Regional Consortia in supporting schools to improve. The guidance will place an expectation on schools to use and analyse comparative data at both national and local levels. This must be clearly linked, however, to school self-evaluation, performance management and target setting. We are also mindful of the range of learning and engagement activities that occur within schools to improve the learning and well-being of children and young people. These should also be taken into account.  
**Welsh Government Response – agree that it should be linked to school self evaluation, the guidance will be strengthened to emphasise this point.**
- More fleshing out of ground 2 (a breakdown in the way the school is managed or governed). Would like to see the monitoring of personnel issues; for example, contested capability proceedings, disciplinary and grievance matters, industrial action and the like given proper mention.

All these can give vital information on the quality of management at a school and might conceivably become triggers for LA involvement.  
**Welsh Government Response – agree to insert reference to capability and disciplinary proceedings to the guidance although these lists are not exhaustive, they provide examples of evidence.**

- Would like to see local authorities allowed sufficient space to develop their own 'informal' arrangements in identifying schools starting to cause concern. We suggest that these arrangements are encouraged by the Welsh Government.  
**Welsh Government Response – LAs have responsibility for monitoring schools and identifying at an early stage where there may be problems and should have robust mechanisms in place to do this. LAs should know their schools and work with them to avoid problems from reaching crisis point. The Welsh Government strongly encourages this approach.**
- Many LAs have informal interventions and it would be useful to share this practice. Would it be appropriate to include information/ideas/interventions that LAs might utilise before it decides to take the more formal warning notice route?  
**Welsh Government Response – this would be most useful and LAs and Consortia should be sharing best practice. However, the respondent has not provided specific examples.**
- Regarding the reference to direct observation of the quality of teaching in the statement in paragraph 39 regarding an appropriate range of evidence to justify LA having concerns – Direct observation by whom? There are serious doubts as to whether all LAs have the appropriate expertise to undertake such observations. Advice would be to remove that reference from the document as being unnecessary, given the general reference to quantitative and qualitative evidence as given in paragraph 1.5.  
**Welsh Government Response – LAs would determine who those individuals would be ensuring that they have the necessary experience. However, consortium System Leaders would be a good choice.**
- Whilst paragraph 1.17 establishes a procedure for the governing body to complain to the Minister regarding unreasonable conduct by the LA, there are no stated time limits nor a requirement for the LA to suspend action until the Minister has determined whether the complaint is justified. There are, regrettably, occasions where the underperformance of the school is the result of underperformance of the LA which has failed to provide meaningful support to the school on tackling matters such as staff underperformance and resolving grievances and disciplinary matters.  
**Welsh Government Response – the Welsh Government would not want to restrict the action by setting timescales. It would depend on the circumstances of each individual case.**

- Regulations relating to Improvement Plans to become statutory are welcomed.  
**Welsh Government Response – The Welsh Government has plans to introduce regulations regarding School Development Plans. It is anticipated that these regulations will come into force in 2014.**
- The document does not clarify the relationship which needs to be established between the LA and Welsh Government (WG) in order to avoid potential tension arising from actions being taken by both parties simultaneously.  
**Welsh Government Response – the warning notice issued to a school by Welsh Ministers will also be copied to the LA – this will set out the action being taken and the timescales to avoid any confusion.**
- Schools subject to the guidance include maintained sixth forms (i.e. Sixth forms within a school that also teaches pupils of compulsory school age). This could be interpreted that provision in 6<sup>th</sup> forms will be considered separately under the six grounds for concern, and therefore it could be possible for a Welsh Minister to close a sixth form through this process without closing the school. This requires clarity.  
**Welsh Government Response – The guidance clarifies this point in sections 3.17-3.19. In most instances a decision on a school requiring special measures or significant improvement will be applied to provision in a school for all age groups. However, there is potential for Estyn to determine that provision being made in a school sixth form requires significant improvement. Where a school's sixth form has been judged to require significant improvement in two consecutive Estyn inspections, or where a maintained school has been assessed as not requiring special measures but where the sixth form is identified as requiring significant improvement, the Welsh Ministers may propose a change of character to the school that would lead to the closure of the school sixth form.**
- It is noted that the guidance is for schools and local authorities. However, it is unclear how the guidance relates to Foundation Schools in particular. This requires greater articulation within the documents.  
**Welsh Government Response – the guidance and associated provisions within the School Standards and Organisation Act 2013 relate to maintained schools in Wales. Foundation schools are maintained schools and are therefore covered by the guidance.**
- It is important that if Welsh Ministers are considering intervening in a particular school, the LA should be consulted to confirm whether there are any actions which are currently in place as a part of the period of early support.  
**Welsh Government Response – If Welsh Ministers consider intervening they would consider all issues before making a**

**decision. The guidance will be strengthened to highlight this point.**

- The warning notice is issued on the basis of the 6 grounds for concern. Paragraph (1.2) refers to issuing a warning notice if a school is refusing to engage constructively with the LA. This is not one of the grounds, unless this can be interpreted under ground 6. It is important that the issuing of warning notices should be clearly linked to the six grounds and the document should not introduce broader applications for warning notices outside of this. Otherwise, introduce a “ground 7” relating to refusal to comply with LA requirements.

**Welsh Government Response – agree that this should be clarified. The paragraph will be revised to include the wording ‘if at least one of the grounds for intervention are satisfied’ at the end.**

- The 6 grounds seem appropriate and clearly define intervention criteria.

**Welsh Government Response – noted.**

- Key sources of information re school management and governance need to include the effectiveness of leadership in monitoring standards and holding staff to account, the school’s improvement plan and evidence of its implementation, the school’s organisational arrangements and arrangements for effective day to day running and the tracking of pupil progress. Capacity to improve is not a source of evidence. When looking at leadership, Leadership Standards for Headteachers should be used to frame the evidence.

**Welsh Government Response – (refers to paragraphs 1.09-1.11) the information provided in the guidance is an example, the list is not exhaustive.**

- Evidence of a Breakdown of discipline – in this paragraph it is unclear whether the last two sentences relate to the issuing of a warning notice or to the reserve powers which LAs already have to direct schools. Should this be a separate paragraph?

**Welsh Government Response – agree to separate into 2 paragraphs for clarity.**

- Paragraph 1.15 – “requires” should be replaced with “determines that the governing body must take”. Or “insists that.... The guidance needs to be unequivocal.

**Welsh Government Response – disagree. The wording will remain as it is as it is the wording used regarding this provision in the School Standards and Organisation Act 2013.**

- The guidance implies that if the LA has issued a warning notice to a school and the school is therefore eligible for intervention, this eligibility will cease if Welsh Ministers issue a warning notice to the governing body. It is unclear as to how a Ministerial warning notice is able to prevent further LA action and intervention.

**Welsh Government Response – there are 3 circumstances when the local authority intervention ends:**

- 1. The local authority itself determines to end the intervention;**
- 2. The Welsh Ministers determines that the intervention by the local authority should end and informs the authority of this;**  
**and**
- 3. The Welsh Ministers issue their own warning notice.**

**The guidance explains this in paragraph 2.31.**

- It is understood that LAs are expected to act in the first instance. It is unclear as to how Welsh Ministers will determine whether the LA has failed to act appropriately and whether there will be any prior consideration of LA actions with the LA before a Ministerial decision to intervene in a particular school is made. Prior consultation with the LA should occur to confirm the actions which have been taken and their appropriateness.

**Welsh Government Response – Welsh Ministers would only be expected to act in exceptional circumstances. They would take into account the whole range of qualitative and quantitative evidence available, including prior action taken by the LA, in determining whether a school is a cause for concern and in forming a view as to the most appropriate means of intervention if that is necessary. A line explaining this will be added to the guidance in section 3.**

- The ability of LAs to require that schools enter into a contract to secure advice or collaborate is welcomed.

**Welsh Government Response – noted.**

- The text box within para 2.3 is unclear as to its purpose – is it an example or a summary – if it is a summary, then it does not include requirement to enter into a contract (later boxes do).

**Welsh Government Response – the text boxes are examples of when the action might be used.**

- Why, if the Welsh Ministers decide to pay an additional governor, can the LA not exercise its right to suspend the Governing Body's right to a delegated budget?

**Welsh Government Response – the text regarding this in paragraph 3.9 has been inserted in the wrong place. The information relates to the provision for IEBs and will be moved.**

- In paragraph 77, an LA cannot suspend a right to delegated budget if an IEB is appointed. Para 59 does not require the LA to return delegated budget rights if they appoint additional governors. Is Para 86 an incorrect cut and paste? Possibly the statement about suspension of rights to delegated budget needs to come in para 89 relating to IEB where there is no mention, instead of here.

**Welsh Government Response – yes the wording is in the wrong place, the guidance will be amended accordingly.**

- The Minister can determine that a school should close if there is no prospect of improvement, but the LA will be required to pick up the costs of termination of staff contracts. This is potentially unfair to LAs.  
**Welsh Government Response – Welsh Ministers will only intervene in exceptional circumstances, – where the LA has failed to act or has acted inadequately. If an LA had intervened adequately a school may not be in this position. The LA has responsibility to deal with any associated issues.**
- Closure of a school 6<sup>th</sup> Form. This has implication for post 16 collaboration and the introduction of mixed 11-16 and 11-18 schools in the same area with consequent pressure on admissions.  
**Welsh Government Response – If Welsh Ministers were considering the closure of a school sixth form because it had been judged as requiring significant improvement, full consideration would be given to the potential effect on the delivery of the curriculum and to schools in the wider area.**
- It is unclear why a copy of the final Action Plan needs to be submitted within 2 days of completing it? This seems bizarre. Surely the Action Plan needs to be submitted by the deadline required in the framework?  
**Welsh Government Response – agree this should be removed. This deadline is not set in legislation. The current legislation specifies that the action plan should be submitted no later than the 45 day deadline given to prepare it.**
- It is essential that LAs should be required to engage properly and effectively with dioceses as soon as any problems have been identified. Pleased to note that there are a number of references to partnership working in the document. These references are stated to be e.g. “where appropriate” or “where applicable”. We appreciate that this is intended to mean that this should be so whenever the school is a Church school and therefore a diocesan authority exists. LAs might interpret this to mean that they only have to work in partnership with the religious authority (diocese) where they consider that it is appropriate. Perhaps this terminology could be changed to substitute the “where appropriate” to “in the case of a Church school”. It is the case that in Wales the only schools with a religious character are Church schools i.e. Catholic or Church in Wales schools, which both have diocesan structures.  
**Welsh Government Response – agree to change the wording. However, to be consistent with the wording set in law, the terminology will be changed to ‘schools with a religious character’.**
- Page 13 paragraph 1.20 refers only to notice being given in the case of a Foundation school to the person who appoints the Foundation

governors and the appropriate religious body of the school if the school has a religious character. There is no reference to VA or VC schools here.

**Welsh Government Response – agree to be included.**

- Page 14 paragraphs 2.2-2.4 refer to the LAs powers in relation to the requirement to secure advice or to collaborate. It is noted that the equivalent power exercised by the Welsh Minister references an expectation that the Welsh Minister will take account of the charitable/religious character of a VA or Foundation school. It would be helpful for this to be replicated in relation to the LAs powers.

**Welsh Government Response – (see page 22). Agree. The wording to be added to paragraph 2.4.**

- Page 15 – it is noted that there have been some helpful additions in relation to the provisions dealing with the appointment of additional governors, including the footnote which draws attention to the need to comply with legal responsibilities as charitable trustees and with the governing document of the charity. It would be helpful for attention to be drawn to the additional requirements as they relate to complexities of charity law and the need to comply with the requirements of the Trust Deed. It is the case that, in Canon law, if the governance arrangements of a Catholic school are changed the school will cease to be a Catholic school unless the new governance arrangements are approved by the bishop. It might be worth adding a note of warning here to the effect that changes in governance of a voluntary school can have unforeseen consequences and reinforce the need for consultation with the religious authority at the outset.

**Welsh Government Response – this is already referenced in the example at paragraph 2.5.**

- Page 17 paragraph 2.14 and Page 35 paragraph 7 – these paragraphs are misleading as they say the Instrument of Government of the school does not have effect in relation to the IEB. We would refer you to provisions of Schedule 13 of the School Standards and Organisation (Wales) Act 2013. Schedule 13 provides that Regulations made under s.19 (2) or (3) of the Education Act 2002 do not apply in relation to IEBs. Ss.19 (2) and (3) set out the requirement in relation to the composition of the Governing Body. Specifically paragraph 13(3) of Schedule 1 states that the Instrument of Government of the school does not have effect in relation to the IEB **insofar as it relates to the constitution of the Governing Body** (our emphasis). In other respects the Instrument of Government does have effect and this should be clarified.

**Welsh Government Response – the wording in the guidance will be revised as suggested.**

- There is some inconsistency in relation to references to the appropriate religious authority which is sometimes referenced as such and at other times referenced simply as the diocese. It would be helpful for

references to be consistent so that there is less opportunity for confusion.

**Welsh Government Response – agree. Re-phrase all references to religious authority.**

- It is clear from the draft Guidance that it is the role of local authorities to intervene in schools in the first instance, if any of the six grounds for intervention are in place. This clarity is welcomed. It is implicit in the Guidance that there should be timely and open communication between local authorities and Welsh Ministers, to inform both parties of any intervention taking place, or that is planned to take place.

**Welsh Government Response – noted.**

- In paragraph 1.3, in respect of grounds 5 and 6 it may be useful to consider whether these two elements could be combined.

**Welsh Government Response – the two elements cannot be combined as they refer to different grounds. Ground 5 refers to the school ‘failing to act’ whilst ground 6 refers to the school ‘acting inadequately/unreasonably’.**

- It appears that there may be a point of accuracy as immediately following on from the paragraph on ground 3 (1.12) the document appears to jump to “*giving a warning notice*” (1.13).

**Welsh Government Response – evidence will be added for grounds 4, 5 and 6.**

- Chapter 2, paragraph 2.1 explains the powers and types of intervention LAs can use under sections 5 to 9 of the 2013 Act and that the Welsh Ministers powers are within section 12 to 18. However, in paragraph 2.31, it states that the Welsh Ministers powers of intervention are under sections 10- 19 of the 2013 Act. Clarity regarding this detail would be useful.

**Welsh Government Response – paragraph 2.1 refers to the paragraphs within the 2013 Act that are specific to the different types of interventions, e.g. to secure advice or collaboration, appoint additional governors etc. Paragraph 2.31 refers to all of the provisions within the 2013 Act that relate to intervention by Welsh Ministers, including warning notices and powers to intervene.**

- The clarity in paragraph 3.1 is welcomed in respect of the fact that it is the local authority’s duty to make decisive and effective use of their intervention powers and that the Welsh Ministers will use their powers only where the local authority has failed to do so or, has done so inadequately.

**Welsh Government Response – noted.**

- The detail set out in Chapter 3 on section 12, 13, 14, 15, and 17 is clear and unambiguous and this is welcomed. However there is no reference to Section 18 and 19.

**Welsh Government Response – section 18 and 19 of the 2013 Act refer to supplementary information regarding Interim Executive Members and Directions. Information on these areas is referenced in the guidance.**

- **Chapter 4**, paragraph 4.5. The WLGA strongly recommends that the wording “[t]he Governing body *should* normally invite the local authority” be strengthened to indicate that the governing body must invite the local authority unless there is a strong reason to do otherwise.

**Welsh Government Response – wording has been revised to state ‘The governing body must invite the local authority and where appropriate, the diocese to be present at all or part of the feedback meetings. The local authority may instead wish to be represented by a representative from its regional consortia. However, only one representative from either the local authority or the regional consortia should attend, but not both’.**

The Welsh Government would like to thank all those who responded to this consultation exercise.

## **Next steps**

Agreed changes will be made to the guidance. The guidance will be published on the Welsh Government website and will come into force along with the associated provisions within the School Standards and Organisation (Wales) Act 2013.

## List of respondents

1. Colin Roberts, Ysgol Pendref
2. NUT Cymru
3. Hayley Bishop
4. Steve Davies, South East Wales Education Achievement Services
5. Governors Wales
6. ATL Cymru
7. Carmarthenshire County Council
8. ASCL Cymru
9. Respondent wishes to remain anonymous
10. Catholic Education Service
11. NASUWT Cymru
12. Flintshire County Council
13. NAHT Cymru
14. Respondent wishes to remain anonymous
15. WLGA