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Llywodraeth Cymru
Welsh Government

Welsh Government
Call for evidence

Independent schools regulations and guidance: call for evidence

Date of issue: 9 December 2021
Action required: Responses by 4 February 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Independent schools regulations

Overview

The Welsh Government is calling for evidence to inform its review of the current arrangements for regulating independent schools in Wales, and its intention to update and revise the supporting registration and operational guidance.

How to respond

The call for evidence asks for views, supporting evidence and suggestions on potential changes to the legislative framework and guidance under which independent schools are regulated.

Responses to this call of evidence should be emailed to the schoolfoodandindependentschools@gov.wales or using the online form to arrive by **4 February 2022** at the latest.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

This document can be accessed from the Welsh Government's website at [Setting up or changing the status of a school](#)

Contact details

For further information:

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information
Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk/>

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Introduction

The Welsh Government is calling for evidence to inform its review of the current arrangements for regulating independent schools in Wales, and its intention to update the regulations and also revise the supporting registration and operational guidance.

This call for evidence asks for views, supporting evidence and suggestions on potential changes to the legislative framework and guidance under which independent schools are regulated. It does not seek to limit unnecessarily the freedom that independent schools have to organise themselves and deliver education and is mindful that any changes should be reasonable and proportionate.

Our thinking is more developed in some areas than others and there is an intention to exercise the powers conferred on the Welsh Ministers by section 167A of the Education Act 2002 to make regulations that prescribe the grounds on which a direction may be given prohibiting a person from taking part in the management of an independent school in Wales. This is considered an important measure that should be taken to safeguard learners.

Safeguarding learners is a high priority for the Welsh Government and we recognise that there are gaps in the current safeguarding arrangements in independent schools. We invite respondents to identify changes which they believe will improve the regulation of independent schools and will provide additional assurances that learners in these settings are safeguarded.

This call for evidence also invites contributions on other areas including;

- steps that could be taken to help strengthen the management and governance of independent schools;
- whether the interventions available to the Welsh Government in cases of failures to meet the independent school standards should be reviewed;
- whether there should be any changes to the quality of education standard to reflect changes in society since they were made to ensure that learners are prepared for adult life.

It also provides an opportunity for you to submit evidence to inform other work that's being developed by the Welsh Government relating to introducing a requirement for teaching and learning support staff in independent schools to register with the Education Workforce Council (EWC).

Who is this for

This call for evidence is for

- Proprietors, governing bodies and prospective proprietors of independent schools
- Parents, learners and prospective parents and learners of independent schools
- All staff in independent schools
- Local authorities
- Regulators of independent schools
- Representative organisations including trade unions
- Organisations representing children and young people in Wales

How to respond

Responses to this consultation should be emailed to the schoolfoodandindependentschools@gov.wales or using the online questionnaire to arrive by **4 February 2022** at the latest.

The call for evidence asks for views, supporting evidence and suggestions on potential changes to the legislative framework and guidance under which independent schools are regulated.

Background

There are currently 79 registered independent schools in Wales. The age range catered for by these schools varies from school to school with some accepting learners up to 18 years while others only provide for specific age ranges. There are also significant variations in the number of learners accepted by a school with the smallest school registered for a maximum of 4 learners and the largest registered for a maximum of 1,500 learners. Some schools offer boarding or residential provision for their learners.

Some of the schools specialise in providing education for learners with additional learning needs (ALN) or special educational needs (SEN). Some offer boarding provision or are linked to a residential setting.

Definition of an independent school

An independent school is defined in section 463 of the [Education Act 1996](#) and provides that;

- (1) An “independent school” means any school at which full-time education is provided for—
 - (a) five or more pupils of compulsory school age, or
 - (b) at least one pupil of that age for whom an EHC plan¹ or a statement or an individual development plan is maintained, or who is looked after by a local authority (within the meaning of [section 22](#) of the Children Act 1989 or section 74 of the [Social Services and Well-being \(Wales\) Act 2014](#)),

and which is not a school maintained by a local authority.

- (2) It is immaterial if full-time education is also provided at the school for pupils under or over compulsory school age.

The regulations relating to independent schools

Principal Regulations and Order are

[The Independent School Standards \(Wales\) Regulations 2003](#)

[The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003](#)

[The Independent Schools \(Religious Character of Schools\) \(Designation Procedure\) \(Wales\) Regulations 2003](#)

[The Independent Schools \(Publication of Inspection Reports\) \(Wales\) Regulations 2003](#)

[The Education \(Independent Schools\) \(Unsuitable Persons\) \(Wales\) Regulations 2009](#)

[The Designation of Schools Having a Religious Character \(Independent Schools\) \(Wales\) Order 2009](#)

¹ Education, Health and Care Plan

Amendments to the regulations include those made by

[The Independent Schools \(Provision of Information\) \(Wales\) \(Amendment\) Regulations 2021](#)

[The Independent Schools \(Miscellaneous Amendments\) \(Wales\) Regulations 2007](#)

While some of the regulations have been amended since they were made, they have become outdated and do not necessarily reflect current best practice, guidance and policies. A number of weaknesses in the current legislation have come to our attention through our experience as the regulator of independent schools, responding to concerns and the experience of Estyn² inspecting independent schools. There are incidence of inspections identifying material changes within the school which have not been approved by the Welsh Government in accordance with the prescribed process, which can result in the school breaching the terms of their registration. There are also examples of schools failing to meet standards relating to the quality of education provided and those relating to the welfare, health and safety of learners.

When there are repeated, multiple or serious failures by an independent school to meet one or more of the standards the evidence can suggest that this is due to weaknesses in the school's management structure and governance processes. Where improvement is required in this area it is generally because self-evaluation and improvement planning activities are not rigorous enough and the quality assurance processes are not sufficiently robust to ensure that leaders can accurately identify the school's strengths and areas for development. This means that key priorities are not identified well enough and planning is not effective enough to strengthen the provision and improve outcomes for learners.

In the 5 years since the 2015/16 academic year Estyn has undertaken approximately 50 core inspections, 90 monitoring visits and 15 focussed visits in independent schools. In the same period the Welsh Government has required a school to provide a post inspection action plan on 53 occasions. The shortcomings in compliance with the Independent School Standards (Wales) Regulations 2003 relate mostly to the standard concerning the quality of education provided and the standard concerning the welfare, health and safety of pupils.

² [Her Majesty's Chief Inspector of Education and Training in Wales](#)

Independent schools registration and operational guidance

To help schools understand how to comply with the regulations and other statutory requirements we have provided the [Independent schools registration and operational guidance](#). The guidance provides further detail about what is required for an independent school to be compliant with the statutory requirements and provide good quality education in a safe environment. It explains the law (although it is not legal advice); the application process for registration of an independent school; the standards that each school is expected to achieve and maintain; the role of the inspection agencies; the powers available to the Welsh Government where an independent school fails to meet the required standards; how to request a change to the registered conditions and other reporting procedures. It includes advice and suggests good practice to help schools maintain their compliance with the standards and signposts to other legislation and guidance that is relevant to independent schools such as equality, safeguarding and wellbeing of learners.

Our experience suggest that schools do not regularly refer to the guidance once they have been registered. Following the guidance would assist schools in ensuring that they adhere to the statutory requirements; for example, in relation to the application process to make a material change to a school.

We would like to hear from you about changes we could make to the guidance to make it more accessible and make it a document that schools will refer to regularly to help them comply with the standards consistently, understand the other statutory requirements and help them to provide good quality education in a safe environment. It is possible to add detail and provide clear direction in a guidance document and to keep the content current to reflect statutory requirements and policy making it a useful reference document for schools. Whilst the regulations and guidance are not intended to be prescriptive about the way a school organises itself and delivers its teaching, there are standards and other regulatory requirements that a school must meet.

Would it be helpful and easier to find relevant information if the guidance set out more clearly the requirements at different stages such as;

- what is expected at the registration stage,
- the requirements within 3 months of registration, and
- the annual return and the ongoing requirements of running the school.

Should the guidance be more comprehensive and;

- offer more assistance about what should be included in policies and other documents such as action plans,
- provide more advice about when a school should submit an application to approve a material change and explain the process for obtaining consent prior to implementing the changes
- a directory of sources of advice and information

Question 1: What changes can we make to the *Independent schools registration and operation guidance* to make it a more useful source of advice and information for independent schools and prospective independent schools?

Safeguarding learners

The school environment should be a place where children are happy, feel safe and secure and able to learn and grow. Safeguarding and promoting the well-being of children and young people attending all education settings is a high priority for the Welsh Government.

Everyone working in an education setting, including in independent schools, who comes into contact with children and their families has a responsibility for safeguarding children and young people. They should work with local authorities, the police, health services and other services to promote the well-being of children and young people and protect them from harm. Achieving this objective requires systems designed to;

- Prevent unsuitable people³ from working with children
- Promote safe practice and challenge poor and unsafe practice
- Identify instances in which there are grounds for concern about a child's well-being and initiate or take appropriate action to keep them safe
- Ensure where there are concerns that a child is at risk of abuse, neglect and/or harm that these concerns are reported to Children's Social Services and/or the Police if the child is in immediate risk of harm
- Contribute to effective partnership working and communication between all those involved with providing services for children and families
- Promote and protect children and young people's rights.

The roles and responsibilities of the proprietors of independent schools, governing bodies, head teachers and staff with designated responsibilities for safeguarding are set out in the [Keep learners safe guidance](#).

Proprietors, governing bodies, council of management, head teachers and staff of independent schools should receive appropriate training on their safeguarding responsibilities and in handling allegations of abuse against school staff.

Local authorities are able to provide safeguarding advice and support to independent schools, and many do, charging appropriate fees for the work. However, they have no obligation to provide these services. Independent schools that do not purchase services from a local authority can approach their regional Safeguarding Children Board (SCB) for advice.

In 2007 amendments were made to the Independent Schools Standards (Wales) Regulations 2003 in relation to Disclosure and Barring Service (DBS) checks. Currently the proprietor (an individual, corporation, Scottish firm or body of persons) and staff, (which means those people working at the school and volunteers) are subject to DBS checks. Members of staff who work with children in boarding accommodation must comply with the National Minimum Standards (NMS) for Boarding Schools 2003, or where applicable NMS for Residential Special Schools 2003, and foreign nationals working at the school are also subject to pre-appointment checks as set out in the '[Preventing unsuitable people from working with children and young persons in the Education Service](#)'.

³ Section 113BA of the Police Act 1997 sets out suitability information relating to children.

Regrettably, there have been instances when independent schools have not had appropriate systems in place to ensure the safety of learners. As part of our review of the regulations, we want to explore what additional measures can be put in place to safeguard children and young people and prevent them from being at risk of harm.

Currently there are specific training modules linked to the requirements of *Keeping learners safe* available for educational settings on [HWB](#) to help them understand their roles and responsibilities and how to implement the guidance. We are considering developing a module specifically for independent schools which will reflect their unique situation and the way they operate. We would like to work with the sector to identify what, over and above what is already available, you would find useful to include in the module.

To make sure that everyone in a school is aware of the policies and understands how they impact on them individually and professionally should schools be required to provide training to all staff and learners on issues such as safeguarding, wellbeing and how to raise concerns?

The Welsh Government thinks it is important that independent schools have appropriate arrangements to engage and involve learners in the development of schools policies and important decisions that impact them. While some schools will have effective systems in place we would like your views on how we can ensure that there is consistent and meaningful approach in all independent schools that allows the learners voice to be heard. Should schools be required to demonstrate that when they review their policies the process takes the views of learners into account?

Are there other people who come into regular contact with learners who should also be subject to DBS checks (such as host families organised by a school or supply staff) and should checks on all staff be updated more frequently?

Questions 2 – Should Disclosure and Baring Service (DBS) checks on the proprietors and staff be updated more frequently?

Question 3 – Are there any other people⁴ who should be subject to DBS or other checks before they can work or come into regular contact with learners at the school?

Question 4 – Would you find a new training module on the requirements of *Keeping learners safe* specifically aimed at independent schools helpful and what, over and above what is already available, should be included in the module?

Question 5 – What additional measures should be introduced to strengthen the safety and wellbeing of learners such as training?

Question 6 – How can we ensure that the voice of learners are heard in the development of policies and decisions that impact them?

⁴ [Find out which DBS check is right for your employee - GOV.UK \(www.gov.uk\)](#)

Complete the questionnaire for the school cleaner employed by a contracted company at the link above as an example

Strengthening management and governance

Strong and effective governance is fundamental to the success of a school. Repeated, multiple or serious failures by an independent school to meet one or more of the standards can suggest weaknesses in the school's management structure and governance processes. In their [annual reports Estyn](#) often link failures in the arrangements for reviewing important areas of the school's work such as the quality of teaching or focusing on improvement priorities and raising standards with shortcomings in the school's leadership processes.

Is there more that could be done in the regulations and guidance to clarify who is responsible for ensuring that the school consistently complies with the standards set out in regulations? Would it be clearer and easier to understand who is ultimately responsible for compliance if the regulations referred to specific roles such as 'proprietor' rather than generic terms such as 'school'?

One approach could be to include more information in the guidance document on areas such as good governance practice; suggested governance structures and their roles and responsibilities; how to build in separation of duties and other checks and balances into the management of a school. An alternative approach would be to introduce requirements in the regulations requiring those who are responsible for the management and leadership of the school to demonstrate that they have the skills and appropriate experience to ensure that the school meets all the other standards consistently enabling high quality learning and teaching.

Introducing new requirements in the standards will enable the Welsh Ministers to take action if there are apparent failings in the school's compliance with those requirements.

Question 7: What additional steps should be taken to strengthen the leadership, management and governance of a school?

Question 8: How should such additional steps be achieved; through regulations or through guidance?

Failure to meet one or more standards

The interventions available to the Welsh Ministers are limited. They have powers to impose relevant restrictions on, and take certain actions in relation to, independent schools in specific circumstances. If the Welsh Ministers are satisfied that a school has failed to meet one or more of the standards and there is a risk of serious harm to the welfare of the learners they can order that the school be removed from the register of independent schools. This is subject to a 28 days right of appeal.

Where either a core or a focused inspection by the inspectorates finds that the school has failed to meet one or more of the standards, the Welsh Ministers will ask the school to submit an action plan setting out the steps it will take to meet the standards(s) and the timeframe for completing the actions. If the independent school fails to comply with the required steps, the Welsh Ministers have the power to take certain action, which could include closing down part of the setting or stopping the admission of new learners. Ultimately, the school could be removed from the register for failing to meet one or more of the standards, which would result in the school having to close immediately.

Removing a school from the register is the strongest enforcement action that the Welsh Government can take. To date, no school has been deregistered in Wales.

We would be interested to hear your views on whether the interventions and enforcement actions available to the Welsh Government between when an action plan does not resolve the concerns and the removal of the school from the register should be reviewed. We would like to explore with you the possibility of developing a framework of intervention, which is reasonable and proportionate and reflects the seriousness of the failure.

Question 9: What actions should be available to the Welsh Ministers to take and in what circumstances? (For example if a school fails to meet one or more of the standards, or if the school fails to implement an action plan, or if a school fails to comply with a direction issued by the Welsh Government).

Other changes

Quality of Education

Independent schools are not required to adopt the curriculum taught in maintained schools and there is no intention to change that. However, there are nearly 20 years since the current quality of education standard was created and society and the needs of young people have changed significantly during that time.

We would like to hear from you whether you think the quality of education standard requires revision to reflect the changes in society since 2003 and make sure that learners achieve their full potential and are being prepared for adult life. For example, are there subject areas or issues that are currently missing that should be added?

Question 10: What changes do you consider are required to the quality of education standard to reflect the changes in society and the needs of learners since the standards were made?

Blended learning (online and classroom learning) in registered independent schools

As part of this review we want to learn from the experiences of schools during the COVID-19 pandemic when teaching was moved online. We have evidence of some schools choosing to move to a blended delivery model with learners only attending the school for part of the time and being taught remotely for the remainder of the time. As this may become a more commonplace method of learning and teaching, we would like to hear your views on whether the regulations and/or the guidance need amending to take into account circumstances when a school chooses to adopt a blended learning model.

Question 11: What changes are required to the regulations and/or guidance to take into account a blended learning model?

Registration of teaching staff with the Education Workforce Council (EWC)

The Welsh Government recognises the importance of updating the regulatory position in respect of independent schools to ensure that staff are registered with the EWC.

Currently staff working in independent schools in Wales are not required to register with the Education Workforce Council (EWC), however they can choose to register voluntarily, and some independent schools require their staff to register, but this is not required by law.

All those who are registered with the EWC are expected to adhere to a professional [Code of Conduct](#). Failure by a registrant to adhere to the Code may call their registration with the EWC into question which in turn may affect their ability to continue as a teacher or learning support worker in a school in Wales. The EWC has legal powers to investigate and hear

cases of alleged unacceptable professional conduct, serious professional incompetence and criminal offences involving registrants.

Introducing a requirement for all teaching staff and learning support staff in independent schools to register with EWC would be an additional step towards safeguarding learners. It would also be part of establishing a clear and well understood process for investigating concerns about individual members of staff, similar to that for staff in maintained schools, by providing a route for individuals or organisations to raise concerns with an external professional body.

As there is no requirement for teaching staff in independent schools to have Qualified Teacher Status (QTS) we would like to hear your views on whether a new registration category of teaching staff should be created for teaching staff at independent schools. Under the current system those who work as teachers in independent schools who do not have QTS can only register as learning support workers although the teaching standards for independent schools are similar to the 'specified work' for teachers in the maintained sector.

In the maintained sector other staff who are engaged in learning support activities such as learning support workers, classroom assistants, instructors, cover supervisors and technicians (this list is not exhaustive) are also required to register with EWC as learning support workers. Should staff in independent schools with similar roles and who have direct interaction with learners to assist or support the work of teaching staff also be required to register with EWC?

The annual registration fee payable by those who are required to register with the EWC is currently set in legislation as £46. The Welsh Government subsidises this fee therefore registrants are currently required to pay £45 if they are registered as a teacher and £15 if they are registered as a learning support worker.

Question 12: Which categories of independent school staff should be required to register with the Education Workforce Council (EWC)?

Question 13: What fees should registrants working in the independent sector be expected to pay?

Question 14: We would like to know your views on the effects of the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 15 : Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 16: We have asked a number of specific consultation questions. If you have any related issues which we have not specifically addressed, please include them in your response.