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Welsh Government

Consultation - Summary of responses

## **Proposed changes to the suite of Regulations under which independent schools in Wales operate**

Proposals to update and strengthen the various Independent Schools Regulations – consultation on the draft statutory instruments

December 2023

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

## Overview

This report presents a summary of the views and perspectives held by respondents with regard to the proposed changes to the suite of Regulations under which independent schools in Wales operate.

## Action required

This document is for information only.

## Further information and related documents

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

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## Additional copies

This summary of responses and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Proposed changes to the suite of Regulations under which independent schools in Wales operate | GOV.WALES](#)

## **Contents**

Introduction	4
Background	4
Summary of responses	6
Welsh Government response and next steps	9

## Introduction

1. All independent schools in Wales are required to register with the Welsh Ministers and comply with a suite of legislation currently comprising five sets of Regulations and one Order which prescribe how they must operate:
  - [The Independent School Standards \(Wales\) Regulations 2003](#)
  - [The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003](#)
  - [The Independent Schools \(Publication of Inspection Reports\) \(Wales\) Regulations 2003](#)
  - [The Independent Schools \(Religious Character of Schools\) \(Designation Procedure\) \(Wales\) Regulations 2003](#)
  - [The Education \(Independent Schools\) \(Unsuitable Persons\) \(Wales\) Regulations 2009](#)
  - [The Designation of Schools Having a Religious Character \(Independent Schools\) \(Wales\) Order 2009](#)
2. The majority of Regulations governing independent schools were made 20 years ago and no longer reflect Welsh Government policies. In addition, over this period, a number of shortcomings, including gaps in the current legislative framework and the manner in which the Regulations are implemented and can be enforced have come to light which need to be addressed as a matter of urgency.
3. Welsh Government consulted on the proposed regulatory changes between 22 May and 17 July 2023, with a view to bringing forward the new legislation in early 2024.
4. The consultation attracted a total of 19 completed responses with a range of views on the proposed regulatory changes. This document summarises the key themes from those responses.

## Background

5. Following a review, Welsh Government ran a Call for Evidence from stakeholders between 9<sup>th</sup> December 2021 and 4<sup>th</sup> February 2022. This resulted in a broad support for change in the existing regulatory regime to help ensure learners in independent schools are better safeguarded. The Children's Commissioner for Wales had also made recommendations that the existing regulations should be updated, and this was followed by recommendations from the Independent Inquiry into Child Sexual Abuse (IICSA), which expressed concerns that the existing regulatory regime needed urgent revision in order to ensure learners in Wales remain safe.
6. In response to the evidence submitted during the engagement with the sector, Welsh Government now intends to replace the Independent School Standards (Wales) Regulations (2003) and the Independent Schools

(Provision of Information) (Wales) Regulations 2003 and to introduce the new Independent Schools (Prohibition on Participation in Management) (Wales) Regulations. These latter Regulations prescribe the grounds on which a direction may be given prohibiting a person from taking part in the management of an independent school.

7. These three sets of Regulations form part of a wider framework of regulation, guidance and policies that work together to safeguard learners in independent schools in Wales.
8. The Call for Evidence identified several key areas where the existing regulations needed urgent revision, including in relation to the governance and management of schools to ensure the safety and well-being of learners. It is intended that the revised Regulations will make the necessary improvements in these areas.
9. The revised Regulations will take account of recommendations from IICSA, for example the requirement for ensuring that schools actively promote the safeguarding of learners, strengthening safeguarding training requirements for school leadership, staff and learners, and consideration of who should be DBS checked, together with increasing the frequency of these checks to every three years.
10. The revised Regulations will also clarify who is ultimately responsible and accountable for maintaining and improving provision at a school, and the wording in several Regulations will be amended to indicate that 'the proprietor', and not 'the school', is ultimately responsible for compliance.
11. Changes to Standard 1 (The quality of education provided by the school) include amending the wording in requirements from 'school' to 'proprietor'; including references to the Equalities Act 2010; and introduce a new requirement that teaching at the school does not undermine the values of democracy, the rule of law and mutual respect and tolerance of those with different faiths and beliefs. There is also a new requirement that proprietors should have due regard to Part 1 of the United Nations Convention on the Rights of the Child. The curriculum the school develop must demonstrate that it meets the needs of all individual learners at the school. For a learner with additional learning needs (ALN), the additional learning provision (ALP) they require will be described in their IDP. A school's curriculum should provide high quality differentiated learning for all learners of compulsory school age which provides experience in the following areas: language, communication, mathematics, science, technology, humanities, health, well-being and expressive arts and a raising of expectations by using terms such as 'effective' or 'good' rather than 'satisfactory' or 'adequate'.

12. Across other Standards, since blended and hybrid working arrangements are increasingly common, changes include that the Standards should reflect those changes in education and society. For example, specific references to the 'classroom' have been removed.
13. More generally, in recognising the need to update the Standards, we are mindful that several of the extant Regulations reference specific documents by name, and that as those documents are replaced the Regulations becomes outdated. We are therefore in the majority of cases removing the named documents from the Regulations and replacing them with references to the policy intent of the guidance to futureproof the Regulations and keep the legislation current. To help schools understand and comply with the Regulations and other statutory requirements, Welsh Government has developed an updated Independent Schools' Registration and Operational Guidance handbook, which we intend to issue once the revised Regulations are made.
14. Another key priority is the phasing in of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#) (ALNET), which also has an impact on the Regulations under review. We have therefore amended the relevant Regulations to reflect the requirements of ALNET.
15. The consultation attracted 19 completed responses, 8 of which came from individual independent schools the remainder being submitted by individuals and larger bodies.
16. Two completed responses were submitted anonymously. One response was submitted by a parent. Where respondees have asked that their details be kept confidential, that request has been honoured. Other responses were provided by the following:
  - Children's Commissioner for Wales
  - Welsh Independent Schools Council
  - Education Workforce Council
  - National Secular Society
  - Catholic Education Service
  - Estyn
  - National Education Union Cymru

## Summary of responses

17. There was broad support for the proposed changes to the suite of regulations under which independent schools in Wales operate. Whilst room for improvement was identified, most responses to the consultation agreed with the proposed changes.

18. 15 respondees agreed with the proposed changes to all Standards within The Independent Schools Standards (Wales) Regulations 2023.

19. Two respondees commented in relation to the proposed changes:

*“Whatever is needed to keep children safe should be supported by schools. It is also good practice to regularly review policies and I think all schools should do this.”*

*“Already common practice in good schools.”*

20. 15 respondees selected agreed with the proposed changes to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and the introduction of Independent Schools (Prohibition on Participation in Management) Regulations 2023.

21. Two respondees commented in relation to the legislation:

*“I think these indicate sensible checks on someone who wants the responsibility of working with children.”*

*“We agree with the proposed amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and Independent Schools (Prohibition on Participation in Management) Regulations 2023. Particularly the details of other business interests as this will highlight any conflicts of interest. The changes proposed ensure that Welsh Government will hold the most up to date information about schools and ensure that learners’ safety is given the highest priority by ensuring that only suitable individuals are able to operate independent schools.”*

22. Some important points were identified which required action to resolve before the final Regulations are brought forward in early 2024. These are detailed below.

#### *The Independent School Standards (Wales) Regulations 2023*

23. The Children’s Commissioner for Wales expressed her view that Standards 1 and 2 of the Draft Regulations relating to the quality of education provided and the Spiritual, moral, social and cultural development of pupils should highlight the need to take account of the requirements of the United Nations Convention on the Rights of the Child. These concerns have been addressed in the Regulations as made.

24. Standard 3 of the Draft Regulations relates to the Welfare, health and safety of pupils but concerns were raised by Estyn that the proprietor should ensure that ‘all staff’ at the school should actively promote the well-being of pupils. This has been addressed in the Regulations as made.

*The Independent Schools (Prohibition on Participation in Management) Regulations 2023.*

25. The Education Workforce Council commented that the procedures for giving a section 167A direction should include the requirement for the EWC to be notified if a section 167A direction is given together with the reasons for it and to whom it applies. This will enable the EWC to consider the relevance of the disclosure under its own statutory function to investigate and consider cases of unacceptable professional conduct, serious professional incompetence, and/or relevant criminal offences against a registered person. We have considered the comment and concluded that there is no need to amend the draft Regulations as proposed by the EWC as the Education Act 2002, section 167C, already provides for such information sharing.
26. There were other suggestions made within the consultation responses regarding a range of minor issues and these have been considered while updating the Operational Guidance document that will be made available alongside the Regulations when they come into force in early 2024.

*Duty to report a child at risk of harm*

27. In addition to questions concerning the draft Regulations, the consultation also sought views on a proposal to potentially introduce a requirement on individuals, including proprietors, governors or trustees of independent schools and all staff and volunteers to inform the local authority where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm. This is associated with a recommendation from the Independent Inquiry into Child Sexual Abuse (IICSA). It is already considered good practice that a school reports where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm, however, this proposal focuses mainly on individuals.
28. 13 respondees selected 'Yes' to the question in relation to 'Duty to report a child at risk of harm'.
29. Two respondees commented in relation to this question:
- "Anything that helps to keep children safe is important."*
- "We strongly agree with the proposal to introduce a requirement on proprietors, governors or trustees of independent schools and all staff and volunteers to inform the local authority where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm."*



30. Although the responses showed support for such a move in principle, it was not the intention to impose this requirement within this package of legislative changes.

### **Welsh Government Response and Next steps**

31. As indicated previously, all comments have been considered and, where appropriate, changes have been made to the suite of Regulations to take account of those comments.

32. In addition, where comments have been made that need to be addressed but would not require changes to the draft Regulations, changes have been made to the Registration and Operational Guidance to encompass those comments. It is intended that the Guidance will be published at the same time that the revised Regulations come into force, although early sight will be provided to the sector in advance to allow independent schools in Wales to better prepare for the revised legislative requirements.