



Llywodraeth Cymru
Welsh Government

PUBLICATION

Proposed changes to the suite of Regulations under which independent schools in Wales operate: explanatory memorandum

Explanatory memorandum of proposed changes to The Independent School Standards (Wales) Regulations, The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations and The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations.

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Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Independent School Standards (Wales) Regulations, The Independent Schools (Provision of Information) (Wales) Regulations, and The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations (hereafter “the Regulations”). I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

Part 1: explanatory memorandum

Description

1. The Minister for Education and Welsh Language has committed to reviewing and strengthening the Independent School Standards (Wales) Regulations 2003 in response to the Children's Commissioner for Wales's annual report 2020-21 and also in response to the Independent Inquiry into Child Sexual Abuse (IICSA).
2. These draft Regulations make good on that commitment. It is intended that the various regulatory changes covered by this Explanatory Memorandum will improve the quality of education and the welfare, health, and safety of pupils in independent schools in Wales, and strengthen governance arrangements by:

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- reflecting current Welsh Government policy across the Education system, creating parity across the independent and maintained settings where appropriate
 - responding to concerns highlighted by stakeholders such as the Children's Commissioner for Wales, including through a Call for Evidence
 - addressing the concerns which have been identified regarding the limitation of Welsh Ministers' powers
 - providing additional assurance that learners in these settings are safeguarded
3. It is intended that the revised Regulations will:
- strengthen safeguarding training requirements for staff and school leadership
 - improve safeguarding by increasing the frequency of DBS checks to every three years
 - strengthen requirements to ensure that schools actively promote safeguarding of learners
 - amend the wording in the Independent School Standards to make it clear that the proprietor is ultimately responsible for compliance
4. The Regulations have been shaped by balancing the need to ensure that any proposed changes are reasonable and proportionate and that they do not limit unnecessarily the freedom independent schools have to organise themselves and deliver education.
5. There are currently five sets of Regulations and one Order which prescribe how independent schools in Wales 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](#)**

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- **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**
6. Since the introduction of those Regulations, a number of deficiencies have come to light in the legislative framework. Historically, where schools fail to meet the quality of education standards expected, the issues often lie with staff not having sufficient information to plan effectively to support pupils' progress in learning. This includes information about pupils' prior attainment meaning the school is unable to plan well enough to help pupils make the progress they are capable of. Progress is also not properly assessed as part of a continuous process which needs to feed back into lessons. To address this, these matters are specifically added to the requirements of the standard.
 7. The standard relating to welfare, health and safety of pupils focusses on the importance of a school providing a safe and secure environment for learning and development. Examples of schools failing to comply with this standard include not analysing and mitigating risks to pupils, and not having in place, and implementing policies that provide for the welfare of pupils when they are in school, and not ensuring pupils have access to welfare resources outside of school hours all of which will be requirements to meet the standard in the new Regulations.
 8. These deficiencies in the regulatory framework and the way they can be enforced have been acknowledged by Welsh Ministers through responses to the Children's Commissioner for Wales's review of the exercise of functions of the Welsh Government under section 72 Care Standards Act 2000. The Welsh Government acknowledged the need for fundamental reform to update the regulatory system for independent schools. As noted above, the same commitment to review the Independent Schools Regulations was

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made in the Welsh Government's response to recommendations in the Children's Commissioner for Wales's Annual Report 2020-21.

9. There have been several previous attempts to update the Regulations, but these were never finalised largely due to other work taking a higher priority but most recently because of the COVID-19 pandemic. Hence there is now an urgent need to update the Regulations.
10. In brief, the Regulations now:
 - amend the Independent School Standards (Wales) Regulations 2003
 - replace **The Independent Schools (Provision of Information) (Wales) Regulations 2003**
 - make **The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations that were initially drafted in 2016**

Matters of special interest to the Legislation, Justice and Constitution Committee

11. None

General background to the independent school sector in Wales

12. There are currently just over 80 registered independent schools in Wales. This number is fairly equally split between mainstream schools and those providing for learners with additional learning needs (ALN) or special educational needs (SEN). The age range catered for varies from school to school, with some accepting pupils up to 18 years while others provide for specific age ranges. There is also significant variation in their size; the smallest is registered for a maximum of four pupils and the largest a maximum of 1,500 learners.

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13. According to the latest school census, which takes place in January every year and which all schools in Wales are obliged to complete, the total number of pupils in the independent sector in Wales is approximately 10,000 with some 850 qualified teachers and 1,200 support staff such as teaching assistants. Unlike the maintained sector, some independent schools offer boarding provision, and these sometimes recruit international learners.
14. Many of the schools who provide for ALN/SEN learners are attached to residential provision, and pupils attending these are usually funded by their local authority. Typically, just over half of these pupils are looked after by their local authority, and they move in and out of the provision regularly, often at short notice, because their care requirements change rapidly. These pupils are therefore some of the most vulnerable young people in Wales and it is crucial that the Welsh Government, local authorities, parents and carers, practitioners and other stakeholders operate within a framework that ensures that they provide the best possible care and safeguarding for these pupils.
15. Applications to register a new independent school are received from education providers periodically. There is therefore a mix of recently established schools and those who have a rich history that stretches back hundreds of years.
16. All independent schools in Wales that meet the definition in **section 463 of the Education Act 1996** are required to register with the Welsh Government and comply with a suite of Regulations. Within the Act, a school is an independent school if it is not maintained by the local authority and provides full time education for: five or more pupils of compulsory school age; or at least one pupil with an Individual Development Plan (IDP); or one with an SEN statement; or one with an Education, Health and Care Plan (EHC); or a pupil who is looked after by a local authority. It is immaterial if full-time education is also provided at the school for pupils under or over the compulsory school age.

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Legislative background

17. Section 157(1) of the Education Act 2002 provides for regulations to be made which prescribe standards about the following matters, (a) the quality of education provided at independent schools; (b) the spiritual, moral, social and cultural development of pupils at independent schools; (c) the welfare, health and safety of pupils at independent schools; (d) the suitability of proprietors of and staff at independent schools; (e) the premises of and accommodation at independent schools; (f) the provision of information by independent schools; (g) the manner in which independent schools handle complaints.
18. Section 160(1) of the Education Act 2002 provides for the making of regulations about the manner of application and information required to be given to the registration authority when applying to register a new independent school. Section 168 provides for the making of regulations that require the proprietor of a registered school to give the registration authority, when the authority so requests, such particulars relating to the school as may be prescribed.
19. Section 167A of the Education Act 2002 conferred powers to Welsh Ministers 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 or placing a restriction on a person's ability to do so.
20. Under section 165 of the 2002 Education Act the registration authority (the Welsh Ministers) may take a range of enforcement actions against an independent school where they are satisfied that one or more of the independent school standards is or are not being met. If the registration authority considers that there is a risk of serious harm to the welfare of pupils at the school, the authority may determine that the school is to be removed from the register.
21. Alternatively, the registration authority will serve a notice on the proprietor of

the school identifying the standard(s) in question and requiring the proprietor to submit an action plan specifying the steps that will be taken to meet the standard. The registration authority may reject or approve (with or without modifications) the action plan. If any specified action in an approved action plan is not taken by the specified date, the registration authority may take a range of enforcement action. This action includes substituting a later date for the taking of that step, removing the school from the register (subject to appeal) or making an order. Such an order may require a school to cease to use any part of the school premises for all purposes or specified purposes, or to close any part of the school's operation or to cease to admit any new pupils of a specified description.

Purpose and intended effects of the legislation

22. The Regulations use the powers in sections 157(1) and 210(7) of the Education Act 2002 to update and introduce new requirements in the Regulations which prescribe the standards with which independent schools must comply. The key themes of these changes will be to strengthen and update the Regulations as necessary and improve the quality of education provided and the welfare, health and safety of pupils in independent schools.
23. The Regulations use the powers in sections 160(1), 168 and 210(7) of the Education Act 2002 to update and introduce new requirements relating to the information a school is required to provide the Welsh Government.
24. The Regulations use the powers in section 167A of the Education Act 2002 and section 171(1) and (2) of the Education and Inspections Act 2006 to make regulations that prescribe the grounds on which a direction may be given prohibiting a person from taking part in the management on an independent school in Wales or placing a restriction on a person's ability to do so. In relation to section 171 they prescribe that a person subject to a section 142 direction is to be treated as if subject to a section 167A direction.
25. Officials will strengthen the guidance for schools on how to develop effective

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action plans. This will set out the Welsh Government's expectations for compliance against the legislative framework and explains the sanctions that could be imposed by Welsh Ministers in certain circumstances where compliance is not achieved. Officials are working with stakeholders to develop a framework for intervention and enforcement which is included in the revised guidance for independent schools.

Intended mechanisms for improvement

26. The current Regulations set out the standards and the requirements in seven parts:
- i) Quality of education provided at the school
 - ii) Spiritual, moral, social, and cultural development of pupils
 - iii) Welfare, health, and safety of pupils
 - iv) The suitability of proprietors and staff
 - v) Premises of, and boarding accommodation at, schools
 - vi) The provision of information
 - vii) The manner in which complaints are handled

Clarifying who is responsible for complying with the Standards

27. The Regulations change many of the requirements from 'the school must' to 'the proprietor must', the purpose of which is to clearly place responsibility for compliance with the standards on a particular entity, for example, the proprietor of the school. The responses to the Call for Evidence supported the proposed approach welcoming the 'sharpening' of the wording. They were also of the view that making these changes through regulations would ensure levels of compliance that would not be seen through guidance. The new Regulations therefore provide that the accountable entity is the proprietor.

Online learning

28. Following the experience of moving teaching online during the COVID-19 pandemic, the Welsh Government has become aware that some independent schools are choosing to continue offering a blended approach to teaching and learning. In response to this significant change to delivery mechanisms, in anticipation of this becoming a more common trend within independent schools, and to future-proof the legislation, the Regulations will make it clear that schools are expected to meet the requirements of the Standards irrespective of how the education and learning is delivered.
29. To aid the above approach and reflecting that teaching may not always be delivered in a classroom setting, any references to 'class time', 'classroom' and 'class' will be removed from the Regulations in all Standards, except those in Standard 5 which relate to the premises and boarding accommodation.

Impact of the Additional Learning Needs and Education Tribunal Act

30. The definition of an independent school was amended by the Additional Learning Needs and Education Tribunal (Wales) Act (ALNET) which came into force in September 2021 except in relation to certain persons (essentially, those for whom the ALNET is not commenced from that date).
31. Where appropriate, the Regulations will refer to the phasing in of the requirements of the ALNET Act by amending the wording in the relevant requirements to include pupils who have Individual Development Plans (IDPs).

Standard 1: quality of education provided at school

32. The Regulations will amend the wording in requirements from 'school' to

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‘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.

33. In addition, the Regulations raise the level of expectation of the quality of the education provision by changing the quality and standard of teaching, from ‘adequate’, ‘satisfactory’ and ‘appropriate’ to a level where the provision is ‘good’ or ‘effective’, for example, we are changing the requirement of the standard so better provision is required to achieve compliance.
34. It is not the intention to undermine an independent school’s ability to develop and deliver its own curriculum. However, the Regulations will make it clear that the curriculum they develop must demonstrate that it meets the needs of all individual learners. 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.

Standard 2: spiritual, moral, social and cultural development of pupils

35. The Regulations will amend the wording in requirements from ‘school’ to ‘proprietor’ to make it clear who is ultimately responsible for compliance; introduce new requirements to encourage pupils to respect the values of democracy, civil and criminal law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; preclude the promotion of partisan political views in teaching; and where practical, within the school, offer pupils a balanced presentations of opposing political views.
36. In addition, a further strengthening of the Regulations will focus on the community and society outside the school at the expense of any reference to the school’s community. The requirement will also include working with the school community to encourage and help pupils understand how they can contribute to the school’s community life.

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Standard 3: welfare, health and safety of pupils

37. The underpinning aim of all regulatory amendments in this standard is to strengthen the safeguarding and well-being of learners by ensuring that all staff receive safeguarding training and comply with all other statutory and mandatory requirements to protect the welfare, health and safety of pupils. An important aspect of this is to make certain that learners know and understand how the school's safeguarding policies impact on them and what their statutory rights are and that they feel confident to raise any concerns they may have.
38. There will be a requirement for the proprietor to ensure that everyone who has leadership and management responsibilities in the school actively promotes the well-being of the learners, improving their health and safety and welfare as well as the school's governance. Introducing this new requirement will help address a gap in the current Regulations and ensure that those with leadership and management responsibilities take a more active role in fulfilling their responsibilities to promote the well-being of pupils.
39. Guidance issued to independent schools will explain that this covers members of the governing and proprietorial bodies as well as employees in management positions. It also relates to anyone with leadership or management responsibilities at a school regardless of their job title or position. Its introduction will allow Welsh Ministers to act if there appear to be failings in the school's management, leadership or governance which result in learners being put at risk of harm.
40. The proprietor of a school can be required to identify in an action plan what steps it will take to address concerns that the school's leadership is failing in its duty to promote the welfare health and safety and well-being of learners. The lack of such a requirement was highlighted in the limited action available to Welsh Ministers to address the response of the council of management to the safeguarding concerns at a school in North Wales which centred on

allegations about the principal's behaviour.

41. There was clear support in the responses to the Call for Evidence to strengthen the requirements around safeguarding training. This was identified as a serious gap in the requirements for independent schools with some respondents stating that the training requirement for staff in independent schools should be the same as for the maintained sector including mandatory safeguarding training. The **IICSA inquiry** has also addressed training in Recommendation 4: Training and awareness-raising, by saying for example, “The Department for Education and the Welsh Government should set nationally accredited standards and levels of safeguarding training in schools; and make the highest level of safeguarding training mandatory for headteachers, designated safeguarding leads in England or designated safeguarding persons in Wales, designated safeguarding governors, or the proprietor or head of the proprietorial body.”
42. To address the weaknesses in the current requirement and respond to the IICSA recommendations above, the Regulations will set a new requirement under Standard 3, to create an environment within every school where everyone has the appropriate level of training so that they understand the education setting's safeguarding policy; understand their responsibilities and know how to respond effectively when they have concerns or hear a disclosure. The Regulations will prescribe that and that all other staff, volunteers, and learners receive appropriate safeguarding training. Schools should also be required to have regard to any guidance issued by the Welsh Government about safeguarding and safeguarding training.
43. The Welsh Government believes that the need for appropriate training extends beyond providing safeguarding training. We consider that good governance and a well-trained and informed workforce is key to securing the welfare, health and safety of learners and raising standards more generally within a school. More advice in guidance about the types of training that would be expected, and sources of training, will be provided.
44. The Regulations will place a requirement on the proprietor to maintain records to evidence that the school's policies are reviewed and updated

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regularly to reflect changes in relevant legislation, guidance, and policy. Policies that are regularly reviewed and adjusted in the light of experience and good practice form the basis for effective safeguarding within the school.

Standard 4: suitability of proprietor and staff

45. Currently, once the initial enhanced DBS checks have been carried out on proprietors and staff, there is no requirement for them to be repeated while they remain in post. The majority of responses to the Call for Evidence agreed that increasing the frequency of these checks would contribute to improving the safety of all learners. Consequently, the Regulations introduce a requirement that DBS checks are renewed every three years. Officials believe that introducing regular DBS checks will put a focus on safeguarding and the importance of having regular measures in place that continually bolster the protection of learners. This is of particular importance in boarding schools, where risks are heightened as boarders often live far away from their families, are under the authority of adults in the school, and are dependent upon them for their welfare.
46. Although the DBS requirements are nuanced depending on the status of the person being checked, in general, the proprietor is required to receive written confirmation that all relevant individuals have the appropriate DBS checks.

Standard 5: premises of, and boarding accommodation at school

47. The Regulations will amend the wording to make it clear that the proprietor is ultimately responsible for compliance with this Standard.
48. The reference to 'special needs' in the current standards refers to pupils with impairments, not pupils with SEN or ALN. Therefore, the wording will change to "special requirements" and will put the focus on the need for buildings and all facilities within the school to be accessible and structurally sound, ensuring that they can be used on a basis of equality by all learners.

Learners with impairments should also have access to learning and extra-curricular activities on an equal basis with all other learners.

Standard 6: the provision of information

49. The Regulations will alter the type of contact details school proprietors must provide to the Welsh Government. They introduce a requirement to make certain information available to parents and require that inspection reports must be published on the school's website and made available to parents and to local authorities if they are responsible for looking after a pupil at the school, funding a pupil at the school or maintaining the IDP or statement for a pupil at the school. This will improve transparency for pupils and parents about the quality of education provided by independent schools.
50. The Regulations will make it a requirement that schools publish the term dates for the current academic year on their website. In the event that schools cannot publish their term dates because they do not have a website, they should be required to provide the Welsh Government with this information so that it can be shared with Estyn and Care Inspectorate Wales.

Standard 7: the manner in which complaints are handled

51. The Regulations will strengthen the governance of the school and improve the level of information available to pupils and parents by amending the wording to make it clear that the proprietor is ultimately responsible for compliance with the Standards. This includes a requirement on the proprietor of a school to publish its complaints handling procedure on the school website or, where that is not possible, to provide pupils, boarders and their parents a copy of the procedure and to make it available to prospective pupils, boarders and parents of prospective pupils or boarders. In addition, a record must be kept of any action taken by the school as a result of those complaints and whether they were upheld.

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Who will be affected by the legislation?

52. The changes will affect the proprietors of independent schools, their staff, their learners and their parents. They will also impact on Estyn when they undertake their inspections and assess compliance with the Standards.
53. For proprietors, the Regulations will reflect that the proprietor is the accountable entity. They will raise the level of expectation of the quality of the education provision by changing the quality and standard of teaching, from 'adequate', 'satisfactory' and 'appropriate' to a level where the provision is 'good' or 'effective', so better provision is required in order to achieve compliance. There will be a requirement for the proprietor to ensure that everyone who has leadership and management responsibilities in the school actively promotes the well-being of their pupils, increasing the levels of health and safety, welfare and governance.
54. The Regulations will introduce a requirement for proprietors to maintain a record of training provided to staff, volunteers, and the governing body to demonstrate a commitment to continual professional learning for all.
55. In relation to teachers, the Regulations will set a new requirement under Standard 3 (welfare, health, and safety of pupils) and create an environment within every school where everyone has the appropriate level of training so that they understand the education setting's safeguarding policy; understand their responsibilities and know how to respond effectively when they have concern or hear a disclosure.
56. For learners there will be additional safeguards in that the Regulations will introduce a requirement that DBS checks are renewed every three years. The Welsh Government believes that introducing regular DBS checks will put a focus on safeguarding and the importance of having regular measures in place that continually bolster the protection of learners, particularly in boarding schools where risks are heightened as boarders are often living far away from their families and are under the authority of adults in the school and are dependent upon them for their welfare.

57. There will be a focus on the need for buildings and all facilities within the school to be accessible ensuring that they can be used on a basis of equity by all learners. Pupils with impairments should also have access to learning and extra-curricular activities on an equal basis with all other learners. The underpinning aim of all of the regulatory amendments is to strengthen the safeguarding and wellbeing of pupils by ensuring that all staff receive safeguarding training and comply with all other statutory and mandatory requirements to protect the welfare, health and safety of pupils.
58. The Regulations will strengthen the governance of the school and improve the level of information available to pupils and parents by amending the wording to make it clear that the proprietor is ultimately responsible for compliance with the standards; requiring the school to publish its complaints handling procedure on the school website or where that is not possible to provide pupils, boarders and their parents a copy of the procedure and to make it available to prospective pupils, boarders and parents of prospective pupils or boarders; and that schools must record any action taken by the school as a result of those complaints and whether they were upheld.
59. The Regulations will align with other work being done to introduce the Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023, which will give the Education Workforce Council (EWC) the power to regulate additional groups of professionals, including teachers in independent schools, and include them in the education workforce register. Taken together, this will provide the public with a high level of confidence that children and young people learning in independent schools will do so in a safe environment.

Consultation

60. An initial Call for Evidence ran between 9th December 2021 and 4th February 2022 and a formal consultation will take place from May to July 2023.

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Call for Evidence

61. In October 2021, the Welsh Government made a presentation at the Welsh Independent School Council (WISC) conference to draw attention to our plans to review the Regulations. This was followed by the publication of a **Call for Evidence** on 9 December 2021, and supported by a series of virtual engagement sessions held with independent schools, local authorities and other stakeholders such as the Children's Commissioner, National Independent Safeguarding Board (NISB), Estyn and Care Inspectorate Wales (CIW).
62. The Call for evidence closed on 4 February 2022. Eleven responses were received, and a summary of those responses was published on 30 March 2022. The headline findings from the **Call for Evidence** showed that there was general agreement that the Regulations required updating and that strengthening regulations around the governance and management of schools and ensuring the safety and well-being of learners were the key areas of concern. They supported the proposals to:
 - strengthen safeguarding training requirements for staff, school leadership, and learners
 - consider who should be DBS checked and increase the frequency of DBS checks to every three years
 - strengthen the Regulations to ensure that schools actively promote safeguarding of learners
 - amend the wording in Standards to make it clear that the proprietor is ultimately responsible for compliance
 - explore the development of a framework of interventions and enforcement actions between when an action plan does not resolve the failure to comply with the Standards and the removal of a school from the register
 - align Regulations with the forthcoming requirement for staff to register with EWC
 - make a new set of regulations, the Independent Schools (Prohibition on

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Participation in Management (Wales) Regulations

63. In September 2022, the Welsh Government made another presentation about the proposed legislative changes at the Welsh Independent School Council (WISC) conference.
64. In addition, Estyn was commissioned by the Welsh Government to hold a series of stakeholder engagement events in January 2023, aimed at increasing awareness of the proposed changes, and encouraging attendees to make their views known in the public consultation. During these events, stakeholders were provided with detail about the proposed legislative changes and given an opportunity to comment on them.

Formal Consultation

65. An eight-week consultation on the draft Regulations and accompanying guidance will run from May to July 2023. This is a shorter consultation than that typically held by the Welsh Government but is justified by virtue of the extensive engagement that has already taken place with the sector, for example, the Call for Evidence and the stakeholder events held in January 2023. The consultation has been drawn to the attention of a wide audience of key stakeholders including schools, local authorities, the Children's Commissioner for Wales, Estyn and the teaching unions.

The risks if this subordinate legislation is not made

66. If the Regulations and supporting guidance are not made, the concerns around the robustness of safeguarding measures in independent schools and the quality of the management will continue.
67. Failure to strengthen the quality of education standards will put learners at risk of poor outcomes; failing to address the gaps in safeguarding measures and strengthening school governance may compromise the welfare, health

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and safety of children and young people learning in independent schools in Wales. The legislative changes, alongside the development of an intervention framework will seek to collectively raise standards and help address the legislative gap which exists for Welsh Ministers not having sufficient powers of intervention.

68. There is also a reputational risk for the Welsh Ministers as failure to deliver these regulatory changes is likely to attract further criticism from the Children's Commissioner for Wales if the Regulations fail to adequately address their recommendations.

Part 2: regulatory impact assessment

69. It is now almost twenty years since the majority of regulations governing independent schools were made. Over that period, a number of deficiencies have come to the attention of the Welsh Government. Core inspections by Estyn have identified frequent failures by schools to comply with the standards in the Independent School Standards (Wales) Regulations 2003 relating to the quality of education provided, and the welfare, health, and safety of pupils.
70. Estyn's annual reports in relation to Independent Schools have made various observations. For example, where schools fail to meet the quality of education standards the issues often lie with staff not having sufficient information to plan effectively to support pupils' progress in learning. This includes information about pupils' prior attainment meaning the school is unable to plan well enough to help pupils make the progress they are capable of. Progress is also not properly assessed as part of a continuous process which needs to feed back into lessons.
71. The Standard relating to welfare, health and safety of pupils focuses on the importance of a school providing a safe and secure environment for learning and development. Examples of schools failing to comply with this standard include not analysing and mitigating risk to pupils, and not having in place,

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and implementing policies that provide for the welfare of pupils when they are in school, and not ensuring pupils have access to welfare resources outside of school hours. Of particular concern has been the gaps in the current safeguarding arrangements and the links to the above weaknesses in the school's governance.

72. These deficiencies in the regulatory framework have been acknowledged by Welsh Ministers through responses to the **Children's Commissioner for Wales's review** of the exercise of functions of the Welsh Government under section 72 Care Standards Act 2000. The Welsh Government acknowledged the need for the fundamental reform to update the regulatory system for independent schools.
73. The same commitment to review the Independent Schools Regulations was made in the **Welsh Government's response to recommendations in the Children's Commissioner for Wales's Annual Report 2021**.
74. The Independent Inquiry into Child Sexual Abuse (IICSA) looked at child sexual abuse in residential schools in both the maintained and independent sector. The evidence given by Welsh Government officials in November 2020 acknowledged that there are weaknesses in the current Regulations. The **inquiry published its report** on 1 March 2022 and, where applicable, the recommendations have been considered in the development of these Regulations.
75. In line with the policy intent, the feedback received, and the evidence gathered as part of the Call for Evidence, the Welsh Government undertook a review of the current legislative framework.
76. While some of the Regulations have been amended since they were made, some have become outdated and do not necessarily reflect current best practice, guidance, and policies. Amendments to address these gaps are proposed, for example, that references to specific documents by name are removed from the Regulations and are replaced with references to the policy intent of the guidance to futureproof the regulations and keep the wording current. Some of the wording in the Regulations has also been changed to reflect the current Welsh Government position in relation to gender

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language.

77. The frequency of shortcomings in the schools' compliance with the standards as set out within **The Independent School Standards (Wales) Regulations 2003**, and in particular those concerning the quality of education provided, and the welfare, health and safety of pupils indicates a need to review the Regulations. In the five years since the 2015 to 2016 academic year, Estyn has undertaken over 150 visits (50 core inspections, 90 monitoring visits and 15 focussed visits in independent schools). The Welsh Government has required a school to provide a post inspection action plan on approximately a third of these occasions.
78. The action plans seek to address recommendations made by Estyn in their inspection reports. For example, the wording of requirements in Standard 1 will be changed – quality of education provided to raise the expected quality and standard of teaching, from 'adequate', 'satisfactory' and 'appropriate' to a level where the provision is 'good' or 'effective'.
79. Inspections have identified examples where a school has made changes to the details contained in its registration which have not been applied for and approved by the Welsh Government in accordance with the prescribed process. This can result in the school breaching its terms of registration.
80. 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 of 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. Many of the proposed changes to the Regulations are designed to address these identified areas of concern.
81. Separately, the Welsh Government seeks to address, through guidance, a potential gap in the current legislative provision in relation to the powers of

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Welsh Ministers between a post-inspection action plan not resolving concerns, and the ultimate sanction of removing a school from the register. The limitations of the actions available to the Welsh Ministers were highlighted in dealing with serious concerns in a school in north Wales in 2021 to 2022. Restrictions can be imposed to close down part of the setting or stop the admission of new pupils, but these do not necessarily address situations when the concerns are about the conduct of staff, the management of the school or the health, safety and welfare of learners at the school.

82. Whilst we cannot prescribe additional powers or sanctions outside of developing new primary legislation, it is proposed to develop, as part of the guidance document, a clear framework of intervention and enforcement with clear procedures for ensuring compliance with specific actions and timeframes with details of the possible sanctions that could be imposed by the Welsh Government.

Options

Option 1: Do nothing

83. If the legislation remains unchanged, the view of the Welsh Government is that there remains the potential for learners' safety to be compromised. Safeguarding children and young people in all settings must be a priority and amending the Regulations is one step towards this. Furthermore, the Welsh Ministers would risk reputational damage if they were not to act upon the recommendations to improve safeguarding made by the Children's Commissioner for Wales, and IICSA.

Option 2: Make some legislative changes

84. Making some legislative changes is an option, but the impact would depend on precisely which changes were made. We could, for example, simply concentrate on getting proprietors to maintain a record of training provided for staff, governing body and volunteers, or we could focus on getting schools to publish their term dates for the current academic year on their website. However, the biggest priority here must be safeguarding learners; and that is what we have interpreted as ‘making some legislative changes’, via regular DBS checks and safeguarding training for staff.

Option 3: Make the legislation in full

85. By amending the Regulations in full, the Welsh Government will not only strengthen the existing legislation, but also be able to address the recommendations of the Children’s Commissioner for Wales and IICSA, ensuring that children and young people in the independent schools setting are appropriately safeguarded and that high standards of learning and governance exist in that setting.

Costs and benefits

Option 1: Do nothing

Costs

86. The financial and reputational costs of carrying the risks of ignoring the known deficiencies in the existing regulatory regime and the

recommendations from the Children's Commissioner for Wales and IICSA are too high to ignore. This is especially the case in the event a child or young person were to be harmed when the legislation that is supposed to keep them safe is known to be inadequate. This option would therefore not meet the policy intent.

Benefits

87. There are no benefits from this option.

Option 2: Make some legislative changes

Costs

88. The costs of making some legislative changes are broadly similar to those for making the full range of legislative changes in terms of Welsh Government officials' time and also of costs to the sector for things like familiarisation and implementation. These costs, which are set out in Option 3, would affect different schools in different ways, depending upon how close to the revised Standards they already are.

Benefits

89. The benefits of introducing some legislative changes are similar to those set out for Option 3, although on a lesser scale. Making some limited changes to the existing regulatory regime by, for example, requiring more frequent DBS checks could result in improvements to increased safeguarding of learners, although this would not address all of the deficiencies highlighted by the Children's Commissioner for Wales or the IICSA report.

Option 3: Make the legislative changes in full

Costs

90. There are several different costs associated with this option.
91. Firstly, there are costs attributable to the Welsh Government in relation to the development of the Regulations and associated guidance, in particular the cost incurred by policy and legal officials of developing it and the cost of the website hosting the guidance. The guidance document has been developed under a contract with Estyn totalling £30,000. This contract covers the development of the guidance, hosting of several stakeholder awareness events and production of the consultation document on the draft regulatory changes to the Independent Schools Regulations. In terms of the costs for the time of officials in developing these Regulations and the documents supporting them, these are met from within existing budgets.
92. The costs of officials' time in translating the draft Regulations, consultation document and the associated guidance are met from within existing Welsh Government budgets, specifically from that of Legislative Translation Unit and consequently falls within the usual run of business activity.
93. The effects of the draft Regulations will not result in any additional funding from the Welsh Government, but there will be costs to independent schools themselves. These will include the cost of proprietors, headteachers and teachers needing to familiarise themselves with the guidance. However, whilst head teachers and proprietors will need to familiarise themselves with the requirements of the revised Regulations, governors are generally not salaried. In terms of teachers and Head Teachers, their salaries are a fixed cost.
94. It is not possible to accurately identify costs for such familiarisation as each independent school enters into a contractual relationship with its staff and consequently staff costs will vary from school to school. Likewise, as independent schools vary tremendously in size, it is not possible to identify

accurately an average number of staff per school. Officials consider that familiarisation with the requirements of the Regulations would amount to no more than half an hour of the time of a proprietor, head teacher or teacher.

95. As for premises costs, there may be a need for some independent schools to equip or adapt their premises so that they meet the requirement for accessibility to all pupils. This will vary from school to school depending upon their existing arrangements; for schools that are already accessible the costs will be low, whilst for those where modifications are required, the costs will be higher. Welsh Government does not provide capital funding to independent schools, which are private businesses and are not eligible to apply for capital funding through the Sustainable Communities for Learning Programme.
96. Recurrent costs will include training – with all staff, for example, needing safeguarding training and complying with all other statutory and mandatory requirements to protect the welfare, health and safety of pupils; staff in leadership and management positions actively promoting the well-being of learners; and proprietors maintaining a record of training provided to staff, volunteers and the governing body to demonstrate a commitment to continual professional learning for all. However, there is already an expectation under the existing Standards that independent schools will have suitable processes in place to ensure children are safe and so these costs are expected to be minimal.
97. The Regulations will generate additional administrative burdens on independent schools - for example, the Regulations will make it a requirement that schools publish the term dates for the current academic year on their website and require schools to publish their complaints handling procedure on their website. It is anticipated that this additional work will be minimal, given that most independent schools already have such arrangements in place.
98. One obvious area where there will be additional costs to independent schools is in terms of extending those who should be subject to DBS checks and increasing the frequency of conducting DBS checks. The Regulations

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will introduce a requirement that DBS checks are renewed every three years, which incurs a cost for the school.

99. It is not possible to be precise about the additional costs right across the sector, because extending and increasing the DBS checks is already effective practice in some independent schools. For example, such schools may already have DBS checks for governors and renew checks on all related personnel every three years. For these schools, there will be little or no additional costs from these revised Regulations. In other schools that do not presently have these arrangements in place however, the costs will be correspondingly higher.
100. Whilst the Regulations introduce a new requirement to renew DBS checks every three years, the Welsh Government will not prescribe how this is done. As such, it will be incumbent on each school to decide whether the checks will be through the DBS update service (current £13 per person, per annum = £39 equivalent over 3 years) or through a new check every three years (current £44 = £14.66 p.a. equivalent).
101. It is therefore very difficult to calculate the actual costs as there are so many variables in individual schools across the sector. For example, several schools may need to introduce DBS checks for governors, whilst this will be a nil cost to others as they may not have governors or the equivalent. Also, the cost will vary depending on the number of staff employed, such as some larger schools who may have large numbers of staff requiring these checks whilst other smaller schools with far fewer staff requiring checks. Cost implications for these additional checks may also need to be considered alongside off-set fee income related factors such as those settings, for example, charging higher fees, with charitable status, operating as not for profit, etc.
102. There will be limited monitoring and enforcement costs on Estyn, associated with ensuring that independent schools comply with the new requirements. However, as Estyn is already required to check against compliance with the existing regulatory regime, Estyn has confirmed these costs will be minimal.
103. Stakeholder engagement is still ongoing so as to best understand what the

costs might amount to, and this Explanatory Memorandum will be updated following the consultation. While there will be costs to independent schools as a consequence of the legislative changes in these Regulations, it is for the schools themselves to ensure that they are operating their businesses in a way that is compatible with the requirements of the Regulations. It is also of paramount importance to note that the improvements to school governance and the improved safeguarding arrangements for children and young people in independent schools are of far greater importance than the costs.

Benefits

104. The benefits of introducing the Regulations in full are as stated previously.
105. Amending the Regulations is a vital element in ensuring that public trust and confidence in the independent school sector in Wales is maintained; as well as safeguarding the interests of children and young people learning in the independent setting. Compliance with the revised regulatory requirements will provide assurance for pupils and parents that the independent school setting is safe. In addition, the Regulations will help to maintain confidence amongst the workforce itself in upholding professional standards. That in turn contributes to the improvement of the standards of teaching and quality of learning in Wales.

Summary of findings of the Integrated Impact Assessment process

Welsh language

106. The proposed legislative changes to the Independent Schools Regulations are not anticipated to have any impacts, either negative or positive, on the

Welsh language. A Welsh language Impact Assessment has been produced.

Children's Rights

107. The legislative changes will result in enhanced safeguarding arrangements in independent schools in Wales and thus will help ensure children and young people are kept safe. No negative implications have been identified. A Children's Rights Impact Assessment has been produced.

Equality and Human Rights

108. Children and young people are the group who will benefit from the additional safeguards put in place by these legislative changes, which will ensure that strict and monitored registration and compliance measures are enforced through legislation and inspection. These Regulations will help ensure that young women and girls and members of the LGBTI community, who are among those most likely to encounter safety concerns, who are learning in the independent school setting will be better protected by means of more effective safeguarding. No negative impacts on any section of society with protected characteristics has been identified. In addition, the legislative changes will have a positive impact on disabled children as they introduce a requirement for school premises to be fully accessible to all pupils. An Equality Impact Assessment has been completed.

Privacy

109. Independent schools already provide the Welsh Government with information about their operation as part of the annual school census. The legislative changes to the Independent Schools Regulations impose minimal additional requirements on independent schools to supply information as

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part of the annual school census but will not lead to existing information being kept in a different way.

Justice Impact Assessment

110. The legislative changes to the Independent Schools Regulations amount to the revocation and replacement of two sets of regulations and the making of one further set. No new primary legislation is being brought forward, nor are any offences being created, removed, or amended. There is scope for new appeals to the First-tier Tribunal on making of the Prohibition on Participation in Management Regulations as section 167B appeals will be engaged. The draft Regulations will not result in any other impact on the justice system. The number of directions made and consequent appeals is expected to be extremely low. Consequently, no Justice Impact Assessment is considered necessary.

Competition Assessment

111. There are no market implications associated with the making of these proposed legislative changes. Whilst there will be a limited financial impact on independent schools, there is no impact from a competition perspective.

Post implementation review

112. The Welsh Government will work with Estyn to monitor, review, and evaluate the regulations following the coming into force date of these regulatory changes. This approach will aim to measure the effectiveness of the revised Regulations and capture their real impact, and, in particular, whether the policy aims are being met.
113. As the registration body, the Welsh Government may, at any time, require

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Estyn to inspect any registered school relating to any, or all, of the Independent School Standards. Estyn will be required to report to the Welsh Government on the extent to which the school meets the Independent School Standards and to arrange for publication of the inspection report if required.

114. The purpose of the review will be to assess whether the regulations are being adhered to and whether they are fit for purpose. These will be for Estyn and Care Inspectorate Wales to carry out during their forthcoming inspections. The review will be on-going because at each termly meeting between the Welsh Government, Estyn and Care Inspectorate Wales, the inspectorate will provide a programme of forthcoming inspections of independent schools planned for the following term. For Care Inspectorate Wales, this includes both boarding and residential special schools, and where possible care homes for children linked to independent special schools provision.
115. Both Estyn and Care Inspectorate Wales will also provide advice every term on the publication schedule for section 163 inspection reports and notes of annual monitoring visits. This will enable officials to alert Welsh Ministers to any contentious issues before the report becomes public, and to begin any follow-up action required.

Summary

116. Welsh Ministers have agreed to Option 3 – to make the legislative changes in full. Taking this approach will ensure that children and young people in the independent school sector will receive the greatest benefits in terms of enhanced safeguarding and well-being and will allow Welsh Ministers to demonstrate compliance with recommendations from the Independent Inquiry into Child Sexual Abuse and the Children’s Commissioner for Wales.

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