



Llywodraeth Cymru
Welsh Government

**THE WELSH GOVERNMENT RESPONSE TO CHILDREN'S COMMISSIONER FOR WALES'
REVIEW OF THE WELSH GOVERNMENT'S EXERCISE OF THEIR FUNCTIONS.**

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Overview

This document provides the Welsh Government's response to the Children's Commissioner for Wales' Review of the Welsh Governments exercise of their functions

Action required

This document is for information only

Further information

Enquiries about this document should be directed to:

Support for Learners Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

e-mail: WELLBEINGshare@gov.wales



@WG_Education



Facebook/EducationWales

Additional copies

This document can be accessed from the Welsh Government's website at <https://gov.wales/childrens-commissioner-wales-review-welsh-governments-exercise-their-functions-government-response>

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



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Introduction

On 25 February 2021, the Children's Commissioner for Wales published her report on her review of the Welsh Government's exercise of its functions in relation to two education policy matters, pursuant to Section 72B of the Care Standards Act 2000 - specifically elective home education, and the regulation of independent schools.

Recommendations

The Welsh Government has accepted 5 recommendations, accepted in principle 3 recommendations and rejected 2 recommendations.

Policy Recommendations

The current Welsh Government must reflect on the findings of this report and make a public, written response before the Senedd is dissolved in April 2021. This response must set out what steps are required to achieve the necessary legal changes to protect children's rights in home education and independent school settings. In light of the pandemic and pressures on Government legal resources, the Government should obtain external legal advice if necessary to achieve this recommendation.	Accept
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Welsh Government Response

This statement confirms the current Government's commitment to upholding children's rights regardless of where they are educated. However, the Government cannot commit to undertake work as future priorities will be a matter for the incoming government.

The Welsh Government aspiration would be to effect changes to legislation which strengthen safeguarding measures within independent school settings, including in relation to the registration of staff with the Education Workforce Council. However, it will be for the next Government to determine how that particular policy and legislation is progressed, and how legal resource can be secured to support the work involved.

Legislative change is urgently needed in the sixth Senedd Term, in respect of both home education and independent schools. This should be seen as a priority for the incoming Government based upon this report. <ul style="list-style-type: none">• In respect of home education, there can be no further missed opportunities. This Review concludes that the time has come to introduce primary legislation in order to avoid the pitfalls around identifying, seeing and speaking to children that the Government has	Accept in principle
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unsuccessfully grappled with throughout this Term.	
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Welsh Government Response

The Welsh Government agrees that there is a need for reform in the policy and legislative framework for Home Education and believes that the work carried out to date provides a solid foundation for future work in this area. Whilst we are unable make a commitment for a future Government, it is our intention to implement the reforms that we set out for delivery before the onset of the pandemic.

I would defer to legal advice as to whether primary or secondary legislation is required to make the necessary changes in respect of independent schools. However the Government’s aim must be to substantially update the regulatory position in respect of independent schools, and to ensure that teachers are registered with the Education Workforce Council. The former can be done through secondary legislation but it remains unclear if primary legislation is needed for independent school staff to register with the EWC. The Government must therefore clarify the legal position as a matter of priority so that work can be commenced as soon as possible to establish the required route so that these changes can be enacted early in the sixth Term.	Accept
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Welsh Government Response

The Government acknowledges the need for fundamental reform to update the regulatory system for independent schools. The independent schools standards (Wales) regulations 2003 do not function in isolation, they form part of a wider framework of regulations, guidance and policies that work in tandem to safeguard learners in these settings. Whilst we cannot make a commitment for future Government, it is our intention to create a robust system, and in doing so we will:

- strengthening the regulations;
- update the Independent schools standards;
- update the wider policy framework to reflect these changes and the potential for consolidating and amending revised guidance to provide a more coherent legal framework and clarify responsibilities for independent schools

The Government also recognises the importance of updating the regulatory position in respect of independent schools to ensure that staff are registered with the Education Workforce Council. It will be for the next Government to determine how that policy and legislation is progressed. The scope of a requirement to register with the Education Workforce Council, and the impact

on existing Regulations, will determine the legislative mechanism needed. Engagement with stakeholders will be needed on the scope of a new requirement to register with the Education Workforce Council.

<p>A substantive update of the Child Practice Reviews guidance is required in line with the Government's own commissioned Review to address the following issues:</p> <ul style="list-style-type: none"> ➤ Long term availability of completed CPR reports; ➤ Role of the National Independent Safeguarding Board (NISB) including accountability structures for ensuring accepted recommendations are implemented at a regional and national level; ➤ Role of Welsh Government in disseminating learning on a national basis and acting upon CPR findings that have wider application beyond the originating Board's area. <p>Welsh Government must review and decide how best to regulate and inspect independent schools. This affects small numbers of children in Wales but nevertheless requires specific, up to date guidance and support relevant to their individual circumstances. Sufficient resource and expertise is required to ensure that this sector is properly managed and supported.</p>	<p>Accept</p>
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Welsh Government Response

The inspection frameworks of Estyn and CIW will need to be amended in line with updates we make to the independent schools standards. As it is our intention to strengthen these standards this will mean the inspection frameworks of Estyn and CIW can be updated to reflect the changes in the standards and any new requirements and or new expectations in revised guidance. In order to make these changes in a timely manner, we will work closely with our inspectorates to make sure that the system is robust and fair.

There are already measures in place to support the dissemination of learning from Child Practice Reviews.

However, we agree that arrangements to share the learning from Child Practice Reviews and other reviews carried out in Wales should be further strengthened. This is one of the reasons why Welsh Government has put in place an ambitious programme of change, which seeks to directly address the issues raised in the review report, through the introduction of a Single Unified Safeguarding Review (SUSR) process for Wales. The development of the SUSR is being taken forward as a result of the acceptance of identical recommendations of two separate reports conducted in 2018 which focussed on the process and impact of Domestic Homicide Reviews in Wales.

This includes work to establish a Wales Safeguarding Repository (WSR) which will act as an archival platform for all public sector safeguarding reviews and will create a process around outcome focussed learning Welsh Government has committed funding to develop the WSR into the next phase which enables the WSR to move from prototype status into operational delivery later this year. A recommendation from the original review which resulted in the development of the SUSR was the creation of a Ministerial Board which provides a process to escalate exceptional issues, including potential changes to policy or issues that involve both devolved and non-devolved functions, at an inter-Ministerial level to influence, support and guide this unique process and outcomes. It also ensures Welsh Government and Westminster are sighted on thematic learning from all reviews conducted to ensure the safeguarding of communities.

We are establishing a Safeguarding Learning Panel, which will monitor and review progress on recommendations of SUSRs in Wales and assist in unblocking impediments to implementation of recommendations.

New guidance will be developed to provide advice on the operation of a Single Unified Safeguarding Review for Wales process, which will complement existing legislation, guidance and duties in the devolved and non-devolved space

It is expected that the work of this project will be complete in the Autumn although full implementation will not be completed until early 2022.

Welsh Government working practices

<p>It is clear that issues that crossed between the safeguarding and education portfolios have repeatedly fallen between the two teams, with the ultimate outcome being a lack of any legislative change. I therefore recommend that the Government establish a Safeguarding in Education team with cross departmental input and responsibilities, that has sufficient resources to be able to discharge all of their functions in a timely manner that keeps children safe and upholds all of their rights.</p>	<p>Accept</p>
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Welsh Government Response

The Welsh Government already has in place a Supporting Achievement & Safeguarding in Education team. This team has responsibility for ‘Keeping Learners Safe’ guidance arrangements. The Safeguarding and Advocacy team in the Social Services and Integration Directorate work closely with the Education team and with other officials across government on safeguarding policy and practice.

There are also cross government arrangements in place to respond to safeguarding matters in Independent Schools and on any safeguarding issue.

This will often involve officials from across policy areas working with the relevant Inspectorate bodies and external safeguarding partners.

A Welsh Government cross-government Safeguarding Group meets on a bi-monthly basis, with membership from across policy areas, to foster joint working and timely communication on safeguarding matters.

<p>Consultation summary reports should be published in a timely manner and there is a need for greater transparency in how the responses have been treated and weighted. Consideration should be given to setting a required maximum timescale for such summaries to be published. If there are unavoidable delays to meeting such a timescale, these should be set out in writing on the Government's consultation page, indicating the proposed revised timeline for the issues to be resolved, rather than being left open ended.</p>	<p>Accept</p>
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Welsh Government Response

The Welsh Government acknowledges that the summary of responses to a consultation should be published as soon as is reasonably practical. Following a 12-week consultation it would be reasonable to publish a summary 6-12 weeks after the consultation closes.

<p>I have noted in evidence to Committees and Government consultations throughout my term as Commissioner my concerns at the lack of quality CRIA being undertaken to inform and drive policy decisions. Instead CRIA are completed late in the process, to reflect the decisions already made rather than to ensure children's rights are taken forward to the maximum extent. In some cases no CRIA is completed at all. My concerns in this regard are well documented.</p> <p>I do not believe that the Government are currently complying with their full legal duties under the 2011 Measure on the basis of this Review. The proposed revisions to the Children's Rights Scheme 2014 provide the perfect opportunity to improve and refine the policy and procedures for CRIA and to shift culture and practices accordingly. I will incorporate this into my written response to the live consultation on the Scheme but would advise the Government to be considering this further before that consultation period comes to an end.</p>	
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Welsh Government Response

Whilst not framed as a formal recommendation, we note the issues raised by the Children’s Commissioner around Children’s Rights Impact Assessments (CRIA). As a learning organisation, the Welsh Government has already taken steps over the last 12 months to improve the CRIA process and since summer 2020 (backdated to January 2020), all completed CRIAs are published on the Welsh Government’s website. The draft Children’s Rights Scheme 2021, which is currently out for public consultation, reflects the aim of continuous improvement. The draft scheme proposes the development of a manual to support all Welsh Government officials in supporting Ministers to fulfil the duty of due regard. This will enable Welsh Government to provide further clarity on the policy and procedures for CRIAs.

We look forward to receiving feedback from the Children’s Commissioner for Wales on the proposed revisions to the Children’s Rights Scheme.

During the Covid19 pandemic , the Welsh Government has been keen to ensure statutory obligations are met and an Integrated Impact Assessment (IIA), including a Children’s Rights Impact Assessment (CRIA), was drafted for decisions taken early in the pandemic. Unlike normal IIA’s, this set out the impact of decisions that have been taken, rather than proposed policy proposals, to provide a transparent account of the actions and mitigations that the Welsh Government had to take to support the emergency response to the pandemic.

CCfW legislative remit and powers

<p>20 years on, the Welsh Government needs to review the Children’s Commissioner for Wales’ legislation and update this in line with the findings of this Review and the Senedd CYPE Committee’s 2020 Children’s Rights in Wales report. This includes looking at:</p>	
<p>a) The Commissioner’s powers to obtain documents as part of a statutory Review;</p>	<p>Accept in principle</p>
<p>b) The Commissioner’s powers in relation to private settings in Wales including independent schools;</p>	<p>Reject</p>
<p>c) The appointment and monitoring of the Commissioner’s role to ensure compliance with the Paris Principles for independent human rights institutions.</p>	<p>Reject</p>

- a) An initial analysis of the nature and extent of the Children’s Commissioner’s power to conduct a review as set out in section 72B of the Care Standards Act 2000 has been undertaken in light of the matters raised within the review report. This has included consideration of the current extent of the Commissioner’s powers to secure documents when conducting a review under section 72B.

It is noted that, whilst the Commissioner's request for information for the purposes of her review was treated as a Freedom of Information Act 2000 request, this did not prevent completion of the Commissioner's review in this case.

However, further consideration – including discussing directly with the Children's Commissioner – to understand the benefits of any additional legislation that would be required is merited.

- b) The Welsh Government does not consider it necessary to amend the powers of the Children's Commissioner beyond what she currently has in relation to independent schools.
- c) The Children's Commissioner for Wales has corporate sole status and is an independent human rights institution. In 2014 the Commissioner was appointed by the First Minister, following a fair and open competition which included a Panel with cross-party representation and young people. While funding rests with the Welsh Government, the Annual Report (having been provided to the First Minister) is placed before the Senedd Cymru/Welsh Parliament as part of its role in scrutiny and accountability.

The Commissioner, like others in public life, is accountable to the public via the Senedd's subject and Public Accounts Committees.

We are not aware of any evidence which demonstrates that the Children's Commissioner's independence has been impeded as a result of the existing arrangements. On this basis, we see no gain in transferring responsibility for the Children's Commissioner and her office to the Senedd, which would require primary legislation.