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Call for evidence – summary of response

Independent schools regulations and guidance

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

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## Overview

This is a summary of response to the Welsh Government's [Call 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.

## 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 response 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: [Independent schools regulations and guidance: call for evidence](#)

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Question 16 – We have asked a number of specific consultation questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.

## Introduction

On 9 December 2021, the Welsh Government published an eight week Call for Evidence which closed on 4 February 2022 to inform its review of the current arrangement for regulating independent schools in Wales and its intention to update the regulations<sup>1</sup> ('the regulations') and also revise the supporting [registration and operational guidance](#) ('the guidance').

In advance of publishing the formal Call for Evidence, a series of engagement sessions were held in November 2021. Independent schools were invited to attend one of four virtual sessions and local authorities and other stakeholders were invited to a separate meeting. Welsh Government officials have also worked closely with Estyn, Care Inspectorate Wales (CIW) and the Children's Commissioner for Wales.

In response to the Call for Evidence, the Welsh Government received 11 written responses from the following (some names have been withheld as requested):

Woodland School  
TGP Cymru  
North Wales Safeguarding Board  
Estyn  
CYSUR (Mid and West Wales Regional Safeguarding Children Board)  
Care Inspectorate Wales (CIW)  
Wales Independent Schools Council (WISC)  
Education Workforce Council (EWC)  
Children's Commissioner for Wales  
Association of Directors of Social Services (ADSS) Cymru

26 schools attended one of the four engagement sessions for independent schools and 7 Local Authorities and other stakeholders attended the separate engagement session.

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<sup>1</sup> [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](#)

[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](#)

The Welsh Government welcomes the responses to the Call for Evidence and would like to thank all those who responded and also to those who attended the engagement sessions. All the responses will be considered and will inform the development of draft regulations and guidance which will be subject to further consultation.

This document is intended as a summary of the written responses received and comments made during the engagement sessions. It does not aim to capture in detail every point raised by respondents. Sixteen questions were asked in the Call for Evidence and the responses to each question is summarised below. Issues raised that did not have a direct bearing on the Call for Evidence have been noted but have not been included as part of this summary of responses.

## **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?**

There were seven responses to this question.

Respondents were in agreement that the registration and operation guidance needs to be updated to be clearer, more accessible and contain references to the most up-to-date policies and contact details.

The common suggestions for changes include:

- References to legislation and outdated guidance needing to be updated to help schools understand the current requirements;
- Cross-referencing the guidance with the relevant Standards so that schools understand the requirements of each Standard and what is needed to comply;
- Ensuring there are clear references to safeguarding procedures particularly around whistleblowing and reporting allegations against staff;
- Setting out more clearly the requirements at the initial registration stage including timescales and expected actions;
- Providing more guidance about when a school should submit an application to approve a material change and explain the process for obtaining consent before changes are implemented;
- Providing a catalogue of suggested template policies, action plans and a checklist that schools can use and adapt for their own settings;
- Ensuring there is a clear definition of the language and terms (such as proprietor) so that the guidance can be more clearly understood;
- The guidance could be supported with training for schools as part of the registration process;
- Provide information about sources of training available to independent schools on issues such as safeguarding; and
- Providing clarity on which information schools are required to make available to parents and the public.

## **Question 2 - Should Disclosure and Barring Service (DBS) checks on the proprietors and staff be updated more frequently?**

There were nine responses to this question.

The majority of responses agreed that DBS checks on proprietors and staff should be updated more frequently. Currently, once the initial enhanced DBS checks have been made on proprietors and staff there is no requirement for them to be repeated while they remain in post. They agreed that this increased safety, particularly for vulnerable children and young people, and helped ensure safeguarding was a priority for all proprietors and members of staff.

One respondent suggested that checks should also be undertaken after a period of extended absence lasting a term or more (such as a secondment or sabbatical).

They also suggested that staff should be required to complete an annual disqualification declaration.

Some respondents highlighted that DBS checks are only a 'snapshot' of a person's record and only valid at the time it is produced. It does not provide a complete list of a person's criminal record.

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

There were eight responses to this question.

To ensure the safety of all learners, all respondents were in agreement that everyone who has regular contact with learners in a school setting should be subject to DBS checks enhanced or otherwise. Some respondents felt that the checks required should match those in maintained schools as children in independent settings should be entitled to the same degree of protection from harm.

It was suggested that the groups of people who should be subject to DBS checks should include the following:

- temporary or agency staff;
- volunteers and contractors;
- staff in the boarding provision,
- host families organised by the school;
- therapeutic staff;
- peripatetic staff and those employed to provide cover at the schools;
- school governance staff, members of management board and trustee, and
- staff from external organisations who provide services 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?**

There was eight responses to this question.

The majority of respondents indicated that a specific module for independent schools would be helpful. It was felt that training should be the same as for maintained schools but should include bespoke modules tailored specifically for independent schools operating in Wales.

Among the suggestions of what should be included were:

- the use of scenarios specific to independent schools;
- information on the requirements around responding to allegations of abuse;
- guidance on when concerns should be referred beyond the school;



- attention to the emotional and mental well-being of learners;
- clearer guidance on the role of the proprietors, head teachers and staff;
- clear links to safeguarding procedures;
- the role of independent advocacy in safeguarding children and young people;
- aligning the module with the social care sector to enhance the knowledge within independent schools;
- information about keeping learners safe online;
- information about peer sexual harassment; and
- a focus on learners who are boarding.

Two respondents did not think there was a particular need for additional training. The view from both was that for independent schools, each policy and guidance document has to be adapted to the specific individual requirements of each school.

### **Question 5 – What additional measures should be introduced to strengthen the safety and well-being of learners such as training?**

There were nine responses to this question.

A number of responses felt that staff in independent schools should be subject to the same training as those in maintained schools with safeguarding training mandatory for all staff and volunteers. There was a view that pupils should also undertake appropriate safeguarding training and safeguarding made evident throughout the curriculum. Clear guidance should be made accessible to learners around information including, human rights, their rights under the United Nations Convention on the Rights of the Child (UNCRC), how to raise concerns, the policies in place at the setting and the support available to them.

Respondents felt that the measures to safeguard learners should be comparable to those in maintained settings and that the relationship between local authorities and independent schools should be strengthened. For boarding children specifically, it was highlighted that training could be strengthened in a number of areas including providing a code of conduct for staff recognising the vulnerability of children at boarding schools and clear guidance on safeguarding for parents. One respondent felt it important for all boarding schools to be required to register with CIW.

Other responses to this question suggested that additional measures should be put in place around responding to bullying and harassment, particularly in regard to recording instances and if they relate to an individual/ individuals with one or more protected characteristic. To reflect the changes in Welsh Government guidance in reducing restrictive practices, two responses suggested strengthening the guidance on the use of these practices and including a requirement to record information about the use of restraint in independent settings.

One response suggested that the regulations are amended to make completion of safeguarding training modules, and a commitment to update the training regularly a prerequisite for a school registration. There was also one call for introducing a statutory duty in the regulations for the proprietor to inform Welsh Government,

Estyn and CIW, if appropriate, within a specified time frame of a Section 5 investigation under the [Social Services and Well-being \(Wales\) Act 2014](#).

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

There were nine responses to this question.

Two responses confirmed that most schools seek to ensure that the voice of learners is included in relevant policies. Other responses reiterated that the participation of learners in decisions that affect them is a human right under Article 12 UNCRC and is therefore not a 'nice to have'.

A number of approaches were suggested to ensure learners were able to participate in the development and policies and in decisions that impact them. The most common recommendation was for school councils (or the equivalent) to be set up by the school to allow learners to have their say and get involved in the policies and decisions which impact them. One response suggested that membership should solely consist of registered pupils with diverse representation from each year from Year 3 and above. Another respondent felt that any new requirements introduced should be supported with guidance and training to ensure their effectiveness and help learners understand how they would be involved. Another single response suggested that consideration should be given to introduce requirements for learners in some settings to sit on the governing body of the setting, similar to the requirements are in place in secondary mainstream school as set out in the [School Councils \(Wales\) Regulations 2005](#).

A number of respondents believed that having access to an independent advocacy service would be beneficial to learners. It would help them understand their rights, aiding clarity and confidence in regards to their ability to speak up and being listened to, specifically in relation anything which makes them feel unsafe. Providing information in a clear and accessible format was also considered important to assist learners in co-producing plans and policies that will impact them.

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

There were six responses to this question.

There was agreement that the regulations should refer to specific roles such as 'proprietor' rather than generic terms such as 'school' to make it clear where responsibilities lie for consistently complying with standards. It was also recommended that there should be a nominated individual for each school approved by the regulator similar to the social care and childcare sector.

It was identified in responses that regulations should be clear on the knowledge, skills and experience required for leading and managing independent schools. Also providing access to the National Professional Qualification for Headship (NPQH)

qualification and resources from the National Academy for Education Leadership (NAEL) would be beneficial.

Due to the differing nature of independent schools respondents called for the differentiation in roles such as proprietor, schools and headteachers to be more explicit. They also called for clear requirements in regulations about knowledge and experience for leading and managing schools that recognised the differing nature of the school. For example, the experience of staff and leadership required in special schools where the most vulnerable learners attend maybe different to mainstream schools.

A respondent welcomed the intention 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. It was considered that the following areas should be included such as individuals also being prohibited from working as part of the leadership team at a maintained school or as part of online education provision and including proprietors and non-teaching members of staff within the same definition.

Some additional recommendations included:

- Mechanisms to ensure that there are checks and balances around decision-making are included in regulations;
- Information on pastoral care and how it will be provided to promote the well-being of learners.;
- Requirements around safeguarding training;
- Guidance on the minimum requirements for governance;
- Publication of governance structures, and
- Ensuring any appointments tie in with EWC registration and DBS checks to ensure any safeguarding concerns are not missed.

## **Question 8 – How should such additional steps be achieved - through regulations or through guidance?**

There were six responses to this question.

The overriding response was for strengthening the leadership, governance and management of schools to be achieved through regulations so it would ensure levels of compliance that wouldn't be seen through guidance. Any shortcomings would be identified through inspections and action could be taken where failures occur. In effect, it would strengthen accountability at all levels.

One respondent provided an example of the procedure being used in England and explained that there was a lack of drivers in place in Wales to ensure that leadership and management responsibilities are met within the independent school sector.

Another respondent suggested the regulations should set out a governance structure with defined roles and responsibilities and include specific mechanisms to build in a separation of duties. They went on to explain that although regulations should prohibit individuals from participating in the management of an independent school,

clear guidance would be needed to explain the powers available to the Welsh Ministers and how to make a referral so that a direction could be issued.

On learning standards, one respondent suggests that any regulations should clearly set out the standards required by independent schools in order to consistently enable high quality learning which included a requirement for settings to take the experiences and views of learners into account in evaluating the quality of teaching and learning.

**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 a school fails to implement an action plan, or if a school fails to comply with a direction issued by the Welsh Government.)**

There were six responses for this question.

There was support in responses for stronger measures to be made available to the Welsh Government and agreement for the introduction of a clear framework of intervention taking a wide range of circumstances into account, for example, where a school was meeting educational standards but proprietors and management were not fulfilling their duties or responsibilities. This should include clear procedures for ensuring compliance with specific timelines at each stage and details of the possible sanctions that can be taken by the Welsh Government.

Suggested sanctions include:

- the issuing of improvement and fixed penalty notices;
- the removing of the responsible individual;
- placing a school in special measures;
- mandating staff training;
- requiring changes to staff and leadership structures;
- require new staff to be employed in key roles (or new non-staff members in governance); and
- allow governance to be passed to another setting or independent board on a temporary basis.

It was felt the option for Ministers to de-register a setting if required should remain.

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

There were five responses to this question.

Respondents indicated that even though independent schools can provide their own curriculum, it should meet the needs of individual learners and link in with the areas of learning within the new curriculum for Wales.

In regard to Standard 1 (Quality of education provided), a number of recommendations were made which included:

- The addition of a definition for full-time education or an indication of expected contact hours;
- Updating the standard to reflect changes made in the Additional Learning Needs and Education Tribunal (Wales) Act (ALNET Act);
- Adding digital competency to the necessary skills list to reflect development in technology and digital innovation;
- Including references to appropriate careers guidance and work related experiences for all ages;
- Consider if Relationship and Sexuality Education (RSE) should be made a mandatory curriculum requirement;
- Raising the level of expectation in standards by changing the wording from 'appropriate', 'adequate' or 'satisfactory' to 'good';
- Incorporating the recommendations of the United Nations Committee on the Rights of the Child into the experiences of children in the independent sector, by mandating for human rights education to be incorporated into children's learning;
- A requirement for all teaching staff in the independent sector to develop knowledge and understanding of the United Nations Convention on the Rights of the Child (UNCRC), and ensure that children know and understand their rights under the convention;
- Reflecting the Curriculum and Assessment (Wales) Act 2021 in the regulations which sets out a duty that all staff must have regard to the mental and emotional wellbeing of children and young people;
- Ensuring the new standards recognise and protect the right of all children to have rest and leisure, to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts (as referred to in Article 31 of the UNCRC), and
- to ensure that learning actively challenges discrimination and that there is a diverse representation across all areas of the curriculum so learners have opportunities to develop understanding of the lives and achievements of disabled people and people of different sex, gender, race, religion, age, and sexuality.

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

There were five responses to this question.

The consensus was that learning needs to reflect the current situation around Covid-19 and the need to be flexible around the blended learning approach. Evidence seems to suggest that schools have offered different approaches following their experiences during the Covid-19 pandemic. However going forward it was indicated that a balanced approach is required to ensure the individual needs of each learner are being met.

A respondent suggested regulations and guidance should be strengthened to reference the quality of online teaching. They should also need to be adapted to support the registration of online schools which are currently operating separately from the usual registration process. Another respondent identified that safeguarding and health and safety of learners was relevant to online learners and it was suggested that the guidance around live-streaming lessons in Keeping Learners Safe should be incorporated into guidance for independent schools.

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

There were eight responses to this question.

The general consensus was that all members of staff in independent schools should be required to register with the Education Workforce Council (EWC). This would bring the process in line with the registration requirements for maintained schools and would provide an additional step towards safeguarding learners. As well as all teaching staff, those in leadership roles should also be required to register.

Respondents highlighted that this would ensure that the professional code of conduct is cohered to and standards among teaching staff is maintained and improved. It would also prevent staff who have been disciplined through the EWC from moving to schools where these checks would not take place.

One respondent confirmed that there were currently two categories of registration, “school teacher” and “learning support staff”. Registration is based on the ‘services’ the individual is providing rather than their actual job title. They explained that in maintained schools, individuals who do not hold Qualified Teaching Status (QTS) are registered as learning support staff. However, there were cases in independents schools where those without QTS were working as teachers.

It was highlighted in responses that there were growing numbers of staff that did not hold teaching qualifications but would come into contact with learners. This group includes for example sports coaches and peripatetic music teachers. They suggested was that these individuals should be registered with the EWC and consideration should also be given to including those that transport pupils to independent schools such as taxi and minibuss drivers.

Another response called for staff who supported learners who are boarding to be registered either with EWC or Social Care Wales as social care workers in line with staff working in care homes.

One respondent suggested that regulations should be revised more widely to take consideration of the student workforce and the ability to register student teachers and youth workers.

Concern was expressed in one response that the requirement to register staff with EWC could lead to having to employ a registered individual rather than the best person for the job.

A further consultation on the requirement of some staff working in independent schools was opened on 1 March 2022. The responses received to questions 12 and 13 will be fed into that process. The consultation document can be accessed [here](#).

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

There were seven responses to this question.

Respondents were in agreement that fees paid by registrants in the independent sector should match those paid by staff in maintained schools. Attention was drawn to the fact that individuals can move between maintained and independent sectors so both sectors would benefit from widening registration.

Attention was drawn in some responses that independent schools are not currently able to access Initial Teacher Training (ITT) and Newly Qualified Teacher (NQT) training despite the same fees being paid. It was identified that this presented a barrier to some school staff joining the EWC.

It was indicated that staff who support children at boarding schools should either be registered with the EWC or with Social Care Wales as social care workers in line with staff working in care homes. Therefore the fees should be matched accordingly.

### **Question 14 – We would like to know your views on the effects that 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?**

There were 7 responses to this question.

All respondents were supportive and saw the proposals as an opportunity to strengthen use of the Welsh language.

Many indicated that there wouldn't be any barriers for use of the Welsh language in independent schools. One respondent highlighted that children should have opportunities to participate in the culture of the bilingual nation in which they live and standards should seek to ensure this.

It was suggested that Welsh Government may wish to review the guidance for publicly funded learner placements at a school and consider the provision of Welsh language as part of the contractual arrangements for that placement.

In terms of negative effects, a respondent identified that it might be difficult to recruit Welsh speakers into the sector.

**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.**

There were four responses to this question.

There was very little feedback on this question compared to the previous question which also involved the Welsh language.

From the responses that were obtained, respondents indicated that there should be sections within the regulations that require schools to provide opportunities to use the Welsh language. It was also indicated that expectations are clear and in line with Welsh Language Standards.

It was felt that the proposal would not have a positive or negative impact.

**Question 16 – We have asked a number of specific consultation questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.**

There were eight responses to this question.

Respondents felt that the regulations and guidance should be continuously reviewed to keep up with policy developments, for example, the ALNET Act. Updates to the current guidance should consider include learning from the Inquiry into Child Sexual Abuse, the addition of liberty protection safeguards and the development of regulations for residential special schools under the Regulation and Inspection of Social Care (Wales) Act 2016 . One respondent suggested adding hyperlinks throughout the guidance to link to the latest policies that are being referenced.

There were also suggestions around the wording and the format of the regulations and guidance. There was support for more consistency and clarity in the phrasing and terminology used, for example, clarifying what is meant by phrases such as 'promote' and 'have regard to'. The level of expectation in the guidance should be raised by using terms such as 'good' rather than 'appropriate or satisfactory' which creates ambiguity around the level of expectation. One recommendation was to provide a glossary or a footnote to define any terminology and/or legal context.



There were other comments on the language being used in the documents and that it should move away from compliance and ensure a stronger focus on the quality of the provision being provided.

Another recommendation was for the regulations to be divided into two sections – one to look at whether the proposed school has the correct documents and buildings in place, the second to examine the quality of provision and implementation.