



BRIEFING PAPER

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Constituency casework: schools in Wales

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Summary

Members often receive enquiries from constituents about school-related matters. Many of these can be answered from readily available information on the internet or in standard publications. Where complex issues are raised it may be more appropriate to refer the constituent to specialist bodies and organisations or to a solicitor if legal advice is sought.

This note gives a very brief overview of the structure of the state-maintained school system in Wales, including an outline of the different categories of schools, as often an answer to a school-related constituency question may depend upon the type of school in question. The note provides brief background and key sources on a selection of issues that are typically raised with Members by constituents. Members who have questions on topics not covered here may contact the Social Policy Section for information.

The various guidance documents referred to in this briefing are current at the time of writing; however, some sources are updated regularly or from time to time so it is advisable to check the relevant websites.

This note relates to Wales only. Education is a devolved area and information on school-related issues is available on the websites of the [Department for Education, Scottish Government](#), and the [Northern Ireland Department of Education](#).

There are also Library briefings:

- [Constituency casework: schools in England](#), SN 05396
- [Constituency casework: schools in Scotland](#), CBP 07819

1. Brief overview of the school system

1.1 Types of school

State-funded schools in Wales are maintained by local authorities. The main categories of maintained schools are:

- **Community schools** – The local authority employs the school’s staff, owns the school’s land and buildings and is the admissions authority. Community special schools are the special school equivalent of mainstream community schools, catering wholly or mainly for children with special educational needs.
- **Foundation schools** – the governing body is both the employer and the admissions authority. The school’s land and buildings are either owned by the governing body or by a charitable foundation. There are also foundation special schools, which are the special school equivalent of the mainstream foundation school, catering wholly or mainly for children with special educational needs.
- **Voluntary-aided schools** – the governing body is the employer and the admissions authority. The school’s land and buildings (apart from playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation. The governing body contributes to the capital costs of establishing the school and subsequent capital building work.
- **Voluntary-controlled schools** – the local authority is the employer and the admissions authority. The school’s land and buildings (apart from the playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation.

Foundation, voluntary-aided and voluntary-controlled schools may be designated by the Welsh Ministers as having a **religious character**. Such schools, often referred to as ‘faith schools’ provide denominational collective worship.

Outside of the state-funded system, **independent schools** in Wales are funded largely through fees paid by parents. Independent schools do not have to follow the national curriculum and are largely in charge of their own affairs, although they are subject to inspection by Estyn, the school inspectorate for Wales.

1.2 National Curriculum

All local authority maintained schools and education settings in Wales are required to teach the National Curriculum. The curriculum is divided into the following stages:

- Foundation stage (ages 3-7)
- Key Stages 2-4 (ages 7-16)

The curriculum requirements are set out by the Welsh Government in a series of [curriculum documents](#).

Reform

A [new curriculum](#) is currently being developed following the [Donaldson Review](#). The Welsh Government has published an implementation plan, [Curriculum for Wales – a curriculum for life](#), with the intention of the new curriculum being available in September 2018 and statutory from September 2021.

2. School organisation

Section 14 of the *Education Act 1996* requires that local authorities must ensure that there are sufficient schools providing primary and secondary education for their area. Schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.¹

The [School Organisation Code](#) is the key document that sets out the requirements and provides practical guidelines in respect of school organisation proposals. It is required to submit proposals to open or close a school, and also to change a school's category.

The following information on issues that must be considered is not exhaustive, but provides an indication of the approach taken.

Box 1: Relevant bodies

Section 38 of the *School Standards and Organisation (Wales) Act 2013* requires the Welsh Ministers to issue a Code that may impose requirements and include guidelines in respect of school organisation on the following (known collectively in this Code as "relevant bodies"):

- the Welsh Ministers;
- local authorities;
- the governing bodies of maintained schools; and
- the promoters of proposals to establish voluntary schools.²

A [Quick Guide](#) from the Welsh Assembly research service provides useful information.

Closing a school

Where a school closure, or reduction in a school's capacity or age range is proposed, relevant bodies should have regard to:

- Whether other provision will provide sufficient school places locally
- Whether sufficient Welsh language and, where relevant, faith provision will be retained
- The impact on journey times for pupils, including those with special educational needs, travelling to school³

There is no presumption in favour or against the closure of any type of school. However, those bringing forward proposals should show that the impact of closure on the community has been assessed through the production of a Community Impact Assessment.⁴

The Cabinet Secretary for Education, Kirsty Williams, announced on [15 November 2016](#) that she would be consulting on changes to the School

¹ Welsh Government, [School Organisation Code](#), p8

² *Ibid.*, p4

³ *Ibid.*, p8-9

⁴ *Ibid.*, p12

Organisation Code in respect of a presumption against the closure of rural schools.

Opening a school

Where it is proposed to open a new school, or to increase a school's capacity or age range, relevant bodies should have regard to:

- Whether there is demand for the expansion in school places, with regard to the schools language, religious character, or gender intake
- Whether proposals will improve access for disabled pupils in accordance with requirements under the *Equality Act 2010*⁵

Other factors, such as the impact on the funding of education, the impact on the attainment of children from economically deprived backgrounds, equality issues, and whether the school or schools involved are subject to any trust or charitable interests which might be affected by the proposal, should also be taken into account.⁶

Changes to school category

It is possible in many cases for state-funded schools to change their category. For instance, community schools may become voluntary aided or voluntary controlled schools. However, schools are not permitted to change their category to foundation.

The [Code](#) notes that restrictions may apply where potential changes wish to be made to a school's faith designation:

It is not possible for [voluntary aided], [voluntary controlled] or foundation schools with a designated religious character to become a community school through a change of category proposal. Similarly community schools cannot become VA or VC schools with a designated religious character. Community schools are not permitted to have a religious character and no alteration may be made to a maintained school that changes its designated religious character or causes it to acquire or lose a designated religious character.⁷

⁵ Ibid., p9

⁶ Ibid., p11-12

⁷ Ibid., p18

3. Teaching in Welsh

The research service at the National Assembly for Wales [sets out that](#) it is the Welsh Government's policy that all pupils should study Welsh from ages 3-16, either first or second language, and that more than a quarter of Welsh pupils are in fully or partially Welsh language education:

Approximately 16% of pupils attend Welsh-medium schools and study Welsh as a first language. A further 10% attend bilingual, dual-medium, or English with significant Welsh provision (see further details on school language categories later in the paper). Welsh Government statistics show that in 2014, 22.2% of 7 year old learners were assessed through the medium of Welsh first language and 17.1% of 14 year olds were assessed in Welsh first language.⁸

The Welsh Government [website provides an overview](#) of Welsh and bilingual education:

What is Welsh-medium education?

Welsh-medium education provides opportunities for children and young people to achieve fluency in the Welsh language through studying a broad range of subjects and disciplines in Welsh. Your child's English skills will also be developed in English lessons and through experiencing some aspects of the curriculum in English.

What is bilingual education?

In some areas of Wales, the provision of bilingual education is the norm. Bilingual education varies across Wales from education where a large proportion of the curriculum is delivered through the medium of Welsh, to education where only a few subjects within the curriculum or a very small number of lessons are taught through the medium of Welsh.

The Welsh Government has also published a [Welsh-medium education strategy](#), which was established for a five year period from 2010. A [Next Steps document](#) has subsequently been published for the period 1 April 2016 – 31 March 2017.

⁸ National Assembly for Wales Research Service, [Welsh-medium education and Welsh as a subject](#), August 2016, p1

4. School admissions

4.1 Overview

Admissions to state-funded schools are handled slightly differently according to the type of school concerned.

To apply to community schools (Welsh medium or English medium) or voluntary controlled schools, parents must contact their local authority, who will provide relevant information and forms. For voluntary aided or foundation schools, parents must normally contact the school directly, but should check arrangements with the relevant local authority.⁹ Parents are not obliged to also apply for a community school, although they may apply to multiple admission authorities.

All maintained schools, including faith schools, must offer a place to applicants, unless the school is oversubscribed. Admissions authorities must have clear, published criteria on how places will be allocated when their school is oversubscribed.

Authorities are largely free to set oversubscription criteria – for example catchment areas, or preference for children of a school's faith – as they believe appropriate. However, certain criteria are forbidden, such as selection by ability or aptitude, discriminating against children with special educational needs, or prioritising children whose parents might contribute to the school financially. A full list of criteria that must not be used is available on page 12 of the [School Admissions Code](#).

4.2 Appeals

Parents who are unhappy with the school place awarded to their child may appeal to an independent appeals panel.

If an appeal is unsuccessful, parents may refer the matter to the Public Services Ombudsman, but the Ombudsman will only assess potential maladministration on the part of the panel, rather than simply a disagreement about the decision. Further appeals for the same school in the same year are unlikely to be permitted, except for a significant change in circumstances.

Detailed rules on the appeals process are provided in the [School Admissions Appeals Code](#).

4.3 Deferred entry

The Welsh Government's [School Admissions Code](#) makes allowances for children to be admitted to school outside of their normal age group. It notes that requests for admission outside the normal year group may be considered in particular cases, although it refers to exceptional ability or ill health rather than the child concerned being born at the end of the school year:

⁹ Welsh Government, [Frequently Asked Questions on school admissions and admission appeals](#) [accessed 9 December 2016]

3.30 Although most children will be admitted to a school with their own chronological age group, from time to time parents seek places outside their normal age group for gifted and talented children, or those who have experienced problems or missed part of a year, often due to ill health. While it would not normally be appropriate for a child to be placed in a year group that is not concurrent with their chronological age, admission authorities should consider these requests carefully and make decisions on the basis of the circumstances of each case and in consultation with the parents and the school, and specifically in relation to what is most beneficial to the child. Due regard should also be given to the Educational Psychologist's report where available, and clear reasons ascertainable for such a decision to be made.

3.31 If it is decided that there are grounds to consider an 'out of year' application, parents refused an application for a place at a school have a statutory right of appeal. However, there is no right of appeal if a place has been offered but not in the desired year group.¹⁰

The Government's FAQs page on school admissions issues includes the following overview:

Q 23. When does my child have to start full-time school?

By law children have to be in school full-time in the term after they are five. Before that time you can ask the admission authority if your child can go to school part-time or put off starting school until later in the school year. This is known as deferred entry. Your child will have to go to school before the end of the summer term or they will lose their place in the class and you will have to reapply for a place. If you do not take up the place offered in the same school year, your child would not normally join the next Reception class but would join the class in which they were originally offered a place.¹¹

¹⁰ Welsh Government, [School Admissions Code](#), July 2013, p24

¹¹ Welsh Government, [Frequently Asked Questions on School Admissions and School Admission Appeals](#), p5 [accessed 20 July 2015]

5. School transport

The Welsh Government has published statutory [Learner Travel guidance](#) that sets out the duties of local authorities relating to school transport. The *Learner Travel (Wales) Measure 2008* provides the principle legislative basis for the rules.

The guidance sets out that local authorities **must**:

- Assess the travel needs of learners in their authority area
- Provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school
- Provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school
- Assess and meet the needs of “looked after” children in their authority area
- Promote access to Welsh medium education
- Promote sustainable modes of travel¹²

There are several other requirements on authorities, for instance that they must have regard to the needs of disabled learners and learners with learning difficulties. Local authorities may also provide discretionary support. The [guidance](#) provides full information.

Local authorities are also required to publish a variety of information:

- their general policy on providing free transport
- the general policy on any travel arrangements made for learners for whom free transport is not provided
- the circumstances that payment of reasonable travelling expenses will be made
- arrangements and policies in relation to learners with learning difficulties/disabilities
- information on how to make enquiries/complaints about travel arrangements, and any local authority appeals procedure
- any other information that the local authority considers would be useful for learners in its area about travel arrangements made by other organisations.¹³

The National Assembly for Wales’ research service has produced [Home to school transport - a guide for constituents](#), which provides a fuller guide.

¹² Welsh Government, [Learner Travel Statutory Provision and Operational Guidance](#), June 2014, p3

¹³ Ibid., p43

6. School attendance

6.1 General issues

Parents are, under section 7 of the *Education Act 1996*, responsible for ensuring that their children of compulsory school age receive a suitable education. Most often this takes place at school, however parents may home educate their children if they wish. All education must be full-time and suitable to a child's age, ability and aptitude, and to any special educational needs that they may have. Welsh Government Guidance has been published on [elective home education](#).

Local authorities have a duty to ensure that children in their area are receiving a suitable education either by regular attendance at school or otherwise.

Schools are required under the *Education (Pupil Registration) (Wales) Regulations 2010* to take an attendance register twice a day; at the start of the morning session and once during the afternoon session.

Where a parent fails to prove that a child is receiving a suitable education, School Attendance Orders may be used to require a child to be enrolled in a particular school. Further legal measures, including prosecution, may be pursued if a parent fails to ensure that their child is receiving a suitable education

The [All Wales Attendance Framework](#) provides more detail on school attendance measures.

6.2 Holidays during term time

The *Education (Pupil Registration) (Wales) Regulations 2010* give schools discretion to grant leave for the purpose of an annual family holiday during term time. Only in exceptional circumstances would more than ten days holiday leave be authorised over a twelve month period. Absences must be agreed in advance by the school.

Penalty fines may be brought against parents for unauthorised absences from school, under the *Education (Penalty Notices) (Wales) Regulations 2013*. Local authorities must have their own codes of conduct for administering penalty fines. Fine may be £60 if paid within 28 days, or £120 if paid within 42 days.

Information is provided in the [All Wales Attendance Framework](#) and also on the [Welsh Government website](#).

7. School exclusion

Responsibility for school exclusions lies with head teachers. [Guidance from the Welsh Government](#) makes clear that permanent exclusion will normally be the end of a lengthy disciplinary process where other strategies have proved inadequate, but that certain one-off offences could prompt a permanent exclusion, such as

- serious actual or threatened violence against another learner or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- use or threatened use of an offensive weapon.

The Guidance also makes clear that exclusions must be formal, and follow the established procedures set out in the Guidance, or risk being unlawful.

Appeals

After a decision to permanently exclude a pupil is upheld by a school's disciplinary committee, the parent/carer and/or the learner must be sent a letter from the committee setting out the reasons for the decision, as well as how and when to appeal. The local authority should also write to the parent/carer and/or learner within three working days, indicating the latest date by which an appeal may be lodged. This will be 15 school days from the date of the discipline committee's decision.

An independent appeal panel must meet to consider the appeal no later than the fifteenth school day after the appeal was lodged.

Independent appeal panels are made up of three or five members: a lay chair in all cases, with one or two education practitioners, and one or two school governors, depending on whether it is a three or five-member panel.

Panels cannot revisit their decisions after they are made. Further appeals may however be made to the Public Services Ombudsman for Wales or to Welsh Ministers. Judicial review may also be possible.

Guidance

Welsh Government guidance on [Exclusion from schools and pupil referral units](#) provides detailed information on the school exclusions process and appeals mechanisms.

8. Special Educational Needs (SEN)/Additional Learning Needs (ALN)

8.1 Current system

Local authorities in Wales are required by section 312 of the *Education Act 1996* to make provision for children with learning difficulties.

The [Special Educational Needs Code of Practice for Wales](#) sets out that by law children have special educational needs if they have a learning difficulty which calls for special educational provision to be made for them. Children have a learning difficulty if they:

- (a) have a significantly greater difficulty in learning than the majority of children of the same age; or
- (b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority
- (c) are under compulsory school age and fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them.¹⁴

Day-to-day, provision for pupils with special educational needs is a matter for the school as a whole, in both mainstream and special education, with responsibilities falling on governors, head teachers, teachers and other staff.¹⁵

The nature of the support children with SEN may receive will vary widely according to their different needs.

- School Action – particular interventions from a teacher to provide additional or different support to a pupil
- School Action Plus – support, usually provided by schools, following advice from external, specialist bodies where School Action is not sufficiently meeting a child's needs

Where school-based support is not sufficient to meet a child's needs, an assessed statutory statement of needs may be provided. Assessments may be requested by parents, education settings and other agencies.¹⁶

Where a child receives a statement, parents may request they be placed in a particular school. Local authorities must comply with their preference unless the school is unsuitable to the child's age, ability, aptitude or SEN, or the placement would be incompatible with the efficient education of the other children with whom the child would be educated, or with the efficient use of resources.¹⁷

¹⁴ S312(2) *Education Act 1996*, Welsh Government, Special Educational Needs Code of Practice for Wales, p1

¹⁵ Welsh Government, Special Educational Needs Code of Practice for Wales, p12-13

¹⁶ *Ibid.*, p74

¹⁷ *Ibid.*, p105

The detailed [Special Educational Needs Code of Practice for Wales](#) provides full information on the system in place, including how to appeal a decision.

8.2 Planned reform

The Welsh Government is proposing significant reform to the existing SEN system, to create a unified system for supporting learners from 0 to 25 with additional learning needs (ALN).

The [Additional Learning Needs and Education Tribunal \(Wales\) Bill](#) was introduced on 12 December 2016 and [a Draft Additional Learning Needs Code](#) was published in February 2017.

The Welsh Government website provides information on [the proposed ALN system](#).

A briefing by the research service of the National Assembly for Wales, [Additional Learning Needs in Wales](#) (November 2016), provides more information on the current system and the proposed reforms. A [blog article](#) by the research service, published after the introduction of the Bill, provides an overview of the Bill itself.¹⁸

¹⁸ Michael Dauncey, National Assembly for Wales research service, [ALN Bill: A 'complete overhaul' of a system 'no longer fit for purpose'](#), 15 December 2016

9. Complaints about schools

Governing bodies of maintained schools in Wales are required by s29 of the *Education Act 2002* to develop complaints procedures for dealing with complaints from parents, pupils, members of staff, governors, members of the local community and others. These policies must be published.

The Welsh Government has produced guidance on [Complaints procedures for school governing bodies in Wales](#), which provides a three stage model for schools in producing their procedures. The three suggested stages are:

- Raise concerns with a teacher or designated person in the school;
- If the issue is not resolved, take the matter to the head teacher if it is not resolved, who will meet with you;
- If the issue is still not resolved, write to the chair of governors.

The Guidance makes clear that this process should be amended in particular circumstances, for instance if the complaint is about the head teacher or the chair of governors.

The guidance further states:

3.26 It is not recommended that governing bodies have an appeals committee that a complainant could go to... Should there be evidence that a complaint has not been considered properly at [governing body level] and therefore that standards of governance are not good enough, then a local authority may consider using its powers of intervention. This power provides sufficient safeguard against bad practice in schools.¹⁹

¹⁹ Welsh Government, [Complaints procedures for school governing bodies in Wales, October 2012](#), p17-18

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