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Welsh Government

## Consultation Document

# Reform of the registration and approval of independent schools in respect of special educational needs

Date of issue: **20 September 2012**

Action required: Responses by **1 November 2012**

# Reform of the registration and approval of independent schools in respect of special educational needs

- Overview** This consultation document seeks views on the reform of the registration and approval of independent schools in respect of special educational needs (SEN). The proposal to reform the current arrangements reflects the changes being considered under the consultation on the reform of the current SEN legal framework. The consultation proposes the removal of section 347 of the Education Act 1996, which concerns the placement of children with SEN statements in independent schools in Wales, as it is deemed no longer necessary in light of the existence of section 160 of the Education Act 2002.
- How to respond** Responses to this consultation should be e-mailed/posted to the address below to arrive by **1 November 2012** at the latest.
- Further information and related documents** Large print, Braille and alternate language versions of this document are available on request.  
The consultation documents can be accessed from the Welsh Government's website at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)
- Contact details** For further information:  
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## **Data protection**

### **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## **Ministerial foreword**

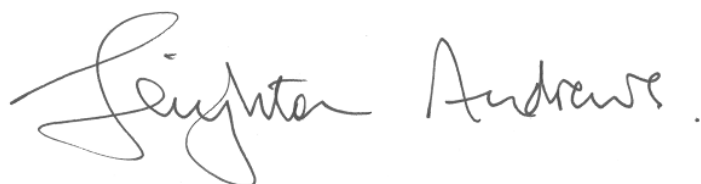
This consultation is concerned with the simplification of the registration and approval system for independent schools in respect of children with special educational needs.

It is our view that the section 347 regime administers a process that is today both unnecessary and duplicates the issues required to be considered in an application for registration under section 160.

I propose to repeal section 347, removing the requirement for approval from Welsh Ministers and place the duty firmly with local authorities who already have responsibility to secure appropriate provision for children and young people with SEN. In doing so, I am keen to take into consideration the consultation of the wider reform of the current SEN legal framework that is considering a change to the term SEN and the replacement of an improved system for statements of SEN.

I also propose to implement safeguards to support the repeal of section 347 to ensure that appropriate provision is in place and to implement effective accountability in rare cases where a child may be placed into an unsuitable independent school.

I welcome your views

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a large initial 'L' and a period at the end.

**Leighton Andrews AM**  
Minister for Education and Skills

## **Introduction**

Independent schools that admit pupils with statements of SEN must be approved by the Welsh Ministers under section 347 of the Education Act 1996. Any establishment wishing to operate as an independent school must apply to the Welsh Ministers under section 160 of the Education Act.

The Welsh Government is consulting on the proposal to repeal section 347, in view of the existing provisions under section 160, and on proposed measures to be put in place to support this legislative change.

The proposal to reform the current arrangements gives due regard the timely changes being considered under the consultation on the reform of the current SEN legal framework.

## Background

### Section 347

Section 347 (s347) concerns the placement of children with SEN statements in independent schools in Wales. It provides for the Welsh Ministers to approve an independent school as suitable for the admission of children for whom statements are maintained by the local authority under s324.

Under s347 (5), for a child to be placed in an independent school, Welsh Ministers must either have approved the school as suitable for the admission of children with SEN statements generally (s347 (5) (a)) or must have approved the placement of a specific child in a particular school (s347 (5) (b)).

The criteria which the Welsh Ministers take into account when considering an application for approval are set out in the Education (Special Educational Needs)(Approval of independent schools) Regulations 1994 ([SI 1994/6510](#)).

### **The Register of independent schools under part 10 of the Education Act 2002**

The Welsh Ministers are the registrar of independent schools in Wales. Any establishment wishing to operate as an independent school must apply to the Welsh Ministers (section 160 of the Education Act). It is an offence for any person to conduct an independent school which is not registered. Applications must include prescribed information, including whether the proposed school intends to admit pupils with SEN (with or without a statement).

Section 160 (s160) provides that when an application is made to be included on the register of independent schools, certain information must be provided including:

- the age range of pupils;
- the maximum number of pupils;
- whether the school is for male or female pupils or both;
- whether the school provides accommodation for pupils;
- whether the school admits pupils with special education needs<sup>1</sup>

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<sup>1</sup> This section is supported by the Independent School (Provision of Information) (Wales) Regulations 2003. These require the following information to be provided to the Registrar (reflected in the application form):

- the age range of pupils
- the maximum number of pupils
- whether the school is for male or female pupils or both
- whether the school provides accommodation for pupils
- whether the school will admit pupils with SEN
- whether the school will cater wholly or mainly for pupils with SEN and the type of SEN.

S162 allows the Welsh Ministers to remove a school from the register if there is a material change in relation to the school and the change has not been approved by the Welsh Ministers. A material change includes a change in respect of any of the matters listed above.

Independent schools which are not registered to admit pupils with SEN may apply to do so to the Welsh Ministers by way of requesting a material change (s162 of the Education Act). Independent schools can currently also seek approval to admit children with SEN statements generally under s347 (5) (a).

In the case where an independent school does not have approval to admit children with SEN statements generally, parents who choose to meet the financial commitment to place their child with SEN into that independent school are not bound by the same legal requirements as local authorities in having to apply for approval to make such a placement.

The purpose of this consultation is to seek views on the proposal to abolish s347 in the light of the existence of s160 and the other proposed safeguards that the Government is proposing to introduce.



## **The repeal of section 347 of the Education Act 1996**

It is the view of the Welsh Government that the s347 regime administers a process that is today both unnecessary and duplicates the issues required to be considered in an application for registration under s160.

As a result of the Education Act 2002, higher standards have been set for the independent school sector as a whole, both via the Act itself and other supporting regulations. The standards against which all independent schools are judged are now higher than those set out in the Education (Special Educational Needs)(Approval of independent School) Regulations 1994. The repeal of s347 would result in the revoking of the Education (Special Educational Needs)(Approval of independent School) Regulations 1994.

The Welsh Government believes that a single registration system under the existing power of s160, supported by appropriate safeguard measures, will sufficiently ensure that independent schools meet the standards for registration to admit pupils with SEN.

Removing the requirement for approval from Welsh Ministers under s347 would also provide an opportunity to remind local authorities that the responsibility to secure appropriate provision for children and young people with a statement of SEN lies with local authorities themselves, under their statutory duty to provide appropriate educational provision.

Local authorities would be able to make their own judgments without reference to the Welsh Government. It is our view that local authorities are better placed to fully investigate the expertise available in a specific school in which a placement is being offered so as to ensure that it matches the needs of the child.

The removal of the approval process will reduce bureaucracy for the Welsh Government, the local authorities and for parents wishing to appeal to the Special Educational Needs Tribunal for Wales (SENTW) for a placement of a child in an independent school that does not have approval to admit children with SEN statements generally. The repeal would not affect parents' rights to appeal to the SENTW.

The repeal of s347 has already taken place in England and came into force on 1 September 2009.

The Welsh Government considers that having two similar systems in place is not necessary, and for the reasons set out above, the Welsh Government is proposing the repeal of s347 of the Education Act 1996.

## **Children and young people with additional needs**

This proposed legislative change coincides with the Welsh Government's consultation on the reform of the current SEN legal framework.

A link to this consultation can be found at:

<http://wales.gov.uk/consultations/education/senframeworkconsultation/?lang=en&status=open>

## **Safeguarding measures to support this proposal**

The Welsh Government has previously considered the repeal of s347 as part of proposals for the Education (Wales) Measure 2010. In October 2010, the Welsh Government undertook a focused consultation on the proposals of this Measure by way of a letter from the Minister for Education and Skills to interested parties. A link to the consultation and responses can be found at <http://wales.gov.uk/topics/educationandskills/publications/reports/proposedmeasure/?lang=en>

Whilst in general the responses to the consultation supported the principle of the repeal, there was concern raised that the repeal would remove a useful check currently in place that helps ensure that learners with statements of SEN are placed appropriately into independent schools that have not been approved for SEN. This was with regard to the Welsh Government seeking the views of Estyn on the appropriateness of such a placement. The concern was that the removal of this arrangement, without replacing it with an appropriate alternative, might leave some vulnerable learners at risk of not receiving adequate educational provision. As a consequence, the Minister for Education and Skills made the decision to remove the proposed repeal from the Education (Wales) Measure 2010 and request that further work be carried out in the context of the overall reform of the current SEN legal framework before consideration to legislate on the repeal was brought forward again.

Further consideration has now been given to a new structure to support the repeal to ensure that appropriate provision is in place to hold local authorities to account if they place children with SEN in unsuitable independent schools that cannot meet their specific needs. The Welsh Government proposes the following measures to help support this legislative change:

### **The registration of independent schools to admit pupils with Additional Needs**

Under our proposals, all independent schools will be able to admit pupils with additional needs (currently SEN) who are without a statement of SEN (or its new equivalent under the proposed reforms).

Independent schools will be required under s160 to register to admit pupils with additional needs (AN) if they intend to cater for pupils who have significant and / or severe AN, which is equivalent to those currently with the same entitlement protection under a statement of SEN. In registering, independent schools will be required to define the provision of AN that they will cater for.

Independent schools registered to admit pupils with AN will be subject to annual monitoring visits, as is currently the case in relation to those schools currently approved as suitable for the admission of children with SEN statements generally.

If an independent school wishes to admit pupils with AN who have significant and/or severe AN but is not registered to do so (ie because all pupils are placed at the school as a result of a specific approval under s347(5)(b)), they will be required to apply to the Welsh Government for a **material change** under the existing provision of s162. Upon receiving Welsh Ministers' approval under s162, the independent school may go forward and admit pupils with AN as defined within their application.

Any independent school wishing to broaden its range of provision of AN would need to make a further application for a material change under s162 setting out the additional AN area it proposed to cater for.

Any application for a material change to admit pupils with AN or to change the range of AN catered for should ideally be submitted to the Welsh Government one term in advance of a placement starting. This will allow for sufficient time for the Welsh Government to consider the application. If this is not possible, the local authority may commence a placement but the independent school must notify the Welsh Government immediately of this and their intention to apply for a material change. Independent schools will then have 6 months from the start of the placement to apply for material change and become approved. If the independent school fails to become approved by the end of the 6 month limit, the placement must end. Continuing the placement without such approval will result in the school breaching the requirements of registration, which could lead the independent school being removed from the register.

Independent schools which are not currently approved for SEN placements but which have already admitted pupils with statements of SEN via s347 (5) (b) will need to apply for a material change, specifying the type of AN that they cater for, as set out above.

The Welsh Government will, on their website, provide a list of registered independent schools which will detail the AN provision that the schools provide in order to assist placing local authorities and/or parents to choose an appropriate school for a child.

### **The publishing of annual monitoring reports of independent schools**

It is proposed that there will be a requirement for a summary of all annual monitoring visit reports conducted by Estyn of independent schools registered to admit pupils with AN to be published online as is currently the case with inspection reports of all schools.

Coupled with the list of independent schools catering for AN, this requirement will allow for all local authorities, both in Wales and across the border, to access up to date information on the suitability of provision at these schools. It will help allow local authorities to make an informed decision when considering placement of children with AN into these independent schools.

This requirement will also allow for parents to obtain up to date information on the suitability of provision at these schools and again help them in determining whether they would wish to place their child into that school.

In addition to this, Estyn will continue to submit full annual monitoring visit reports to the Welsh Government. In cases where the report highlights any shortcomings to standards for registration, the Welsh Government will have the power under existing legislation to act upon failure to meet standards for registration. This may include the power to serve a notice on the proprietor of the independent school to submit an action plan detailing the steps the school will take to meet a standard/s or even determine that the school is to be removed from the register.

An example template of a summary annual monitoring visit that would be published online is attached to this consultation at annex 1.

### **The issuing of guidance to local authorities and proprietors of independent schools**

There are already existing local authority duties in respect of children generally and specifically with SEN and these include:

- identify, assessing and making appropriate provision for pupils with SEN (sections 321 and 323 of the 1996 Act)
- produce a statement of SEN specifying the provision needed and the type of school that the authority considers would be appropriate (section 324 of the 1996 Act)
- must comply with a parental request for a place at a maintained school (section 316 of and schedule 27 to the 1996 Act)
- the granting of access to the premises of any school (including an independent school) to the local authority for the purpose of monitoring the provision of SEN for a child for whom the local authority maintain a statement (s327 of the 1996 Act)
- reviewing the statement of SEN at least annually (section 328 of the 1996 Act)
- provide for the resolution of disputes between parents and (amongst other things) the authority or an independent school (section 332B of the 1996 Act)
- have regard to promoting the safeguarding and welfare of pupils (section 175 of the 2002 Act)
- if a child is looked after an independent reviewing officer is required to review the local authority's care plan (this includes education provision) at least every 6 months<sup>2</sup>.

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<sup>2</sup> See regulation 4 of the Review of Children's Cases (Wales) Regulations 2007

It is proposed that guidance will clearly detail the rights, roles and responsibilities of local authorities, parents, and independent schools. Although the guidance would be non-statutory, it will refer to existing legislation (as above) that places duties on local authorities in respect of children's educational provision and reference to the standards for independent school registration. This guidance would also remind local authorities and independent schools of their existing duties in respect of children's educational provision and also refer to Welsh Ministers' powers with regard to cases of non-compliance with such duties.

## Annex

### Visit: Annual monitoring/post s163 monitoring of registered independent special schools

School	
School Number	
Purpose of visit	
Date of visit	
HMI/AI	
Principal/Headteacher	
Proprietor	
Number of Staff	
Number of pupils	
Provision	
Type of learning difficulty catered for by the school	
Last Section 10/163 inspection	
Last HMI inspection	
Last CSSIW visit	

#### Main findings

##### 1. Strengths

This section will be used to report on strengths identified through the visit.

##### 2. Emerging issues and/or areas for development

This section will be used to:

- report on any other issues that arise during the course of a visit that are significant enough to lead to a new recommendation
- highlight any material changes (eg to premises, proprietors) and significant variations in the needs of pupils in relation to the types of learning difficulties for which the school is registered, if applicable
- note any issues that are worth recording but do not require action by the school. (This might be the opening of new facilities, curricular changes or changes to the staffing of the school).

### **3. Recommendations**

Any non-compliance with the Independent School Standards (Wales) Regulations 2003 will always be included as a key issue for action.

If there is evidence that the school does not meet any of the regulatory requirements, this section must include the following statement:

- The school should take steps to comply fully with the regulatory requirements for Standards 1/2/3/4/5/6/7 (delete as appropriate), as listed below.

Other key issues might include further action to address recommendations from previous S 163/monitoring inspections.

#### **Progress in addressing recommendations from previous note of visit or inspection report**

The focus of visits will normally be recommendations from the previous monitoring inspection or Section 163 inspection. This section will provide only a **summary** of progress. The statements below will be used:

This recommendation has been fully addressed

This recommendation has been largely addressed

This recommendation has been partly addressed

This recommendation has not been addressed

Recommendations that have been fully addressed will not need to be followed up at subsequent visits.

**Recommendation 1:**

**Commentary:**

**Recommendation 2:**

**Commentary:**

**Recommendation 3:**

**Commentary:**

**Etc.**



## **Compliance with the standards for registration**

### **Standard 1: The quality of education provided by the school**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

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

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

### **Standard 3: Welfare, health and safety of pupils**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

#### **Standard 4: The suitability of proprietors and staff**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

#### **Standard 5: Premises of and boarding accommodation at schools**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

#### **Standard 6: The provision of information**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should:

#### **Standard 7: The manner in which complaints are to be handled**

Either

On the basis of this visit, there is no evidence to indicate that the school does not meet the regulatory requirements for this standard.

Or

The school does not fully meet the regulatory requirements for this standard. In order to comply fully with the Independent School Standards (Wales) Regulations 2003, the school should.

### **Recommendation regarding registration**

When considering this school's registration the Welsh Government may wish to have regard to the following recommendation:

Either:

- on the basis of this visit, there is no evidence to indicate that the school does not meet the requirements of the Independent School Standards (Wales) Regulations 2003.

Or:

- the school does not currently meet the requirements of the Independent School Standards (Wales) Regulations 2003. To comply fully with these requirements, the school should address the issues identified above for each standard.

And:

Inspectors' judgements on this annual monitoring inspection should not prejudice the findings of a future full Section 163 inspection.