



Llywodraeth Cymru
Welsh Government

PUBLICATION

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

We want your views on the updating and strengthening of the Regulations governing independent schools.

First published: 16 May 2023

Last updated: 16 May 2023

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Contents

Overview

Background

What are the proposed changes?

The consultation process

Overarching Changes

Standard 1: quality of education provided

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

Standard 3: welfare, health and safety of pupils

Standard 4: the suitability of the proprietor and staff

Standard 5: premises of and boarding accommodation at schools

Standard 6: the provision of information

Standard 7: the manner in which complaints are to be handled

Other proposed legislation

Duty to report a child at risk of harm

Consultation questions

How to respond

UK General Data Protection Regulation (UK GDPR)

Your rights

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Overview

All independent schools in Wales are required to register with the Welsh Government and comply with a suite of Regulations. There are currently five sets of Regulations and one Order which prescribe how independent schools in Wales operate:

- [The Independent School Standards \(Wales\) Regulations 2003](#)
- [The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003](#)
- [The Independent School \(Publication of Inspection Reports\) \(Wales\) Regulations 2003](#)
- [The Independent School \(Religious Character of Schools\) \(Designation Procedure\) \(Wales\) Regulations 2003](#)
- [The Education \(Independent Schools\) \(Unsuitable Persons\) \(Wales\) Regulations 2009](#)
- [The Designation of Schools Having a Religious Character \(Independent Schools\) \(Wales\) Order 2009](#)

Following a Welsh Government review of the Regulations, findings from the [Call for Evidence](#) from stakeholders and the recommendations of the [Independent Inquiry into Child Sexual Abuse](#) (IICSA), we now intend to amend the Independent School Standards (Wales) Regulations (2003) and The independent Schools (Provision of Information) (Wales) Regulations 2003.

We also propose making the Independent Schools (Prohibition on Participation in Management) (Wales) Regulations. These Regulations prescribe the grounds on which a direction may be given prohibiting a person from taking part in the management of an independent school.

These three sets of Regulations form part of a wider framework of regulation, guidance and policies that work together to safeguard learners in independent

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schools.

This consultation seeks your views on the proposed changes to this suite of Regulations. The responses we receive to this consultation will help inform the final updated versions of the Independent School Standards (Wales) Regulations 2003, the Independent Schools (Provision of Information) (Wales) 2003 and the Independent Schools (Prohibition on Participation in Management) (Wales) Regulations.

Background

Where are we now?

It is now twenty years since the majority of Regulations governing independent schools were made. Over this period, Welsh Government has identified a number of shortcomings, including gaps in the current legislative framework and the manner in which the Regulations are implemented and can be enforced.

Why are we proposing change?

As a result, Welsh Government's policy work in this area has led to a review of the regulatory framework surrounding all independent schools in Wales. The intention of this work is to strengthen and update the Regulations as necessary to improve the quality of education and the welfare, health and safety of pupils in independent schools. We also wish to take measures to strengthen governance arrangements.

This ambition reflects current Welsh Government policy across the education system by creating parity between maintained and independent schools where appropriate. The proposals also reflect concerns highlighted by stakeholders

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including views expressed and issues raised during last year's **Call for Evidence**, as well as recommendations for Wales from the **Independent Inquiry into Child Sexual Abuse** (IICSA).

Welsh Government's intention now is to replace both **the Independent School Standards (Wales) Regulations 2003** and **the Independent Schools (Provision of Information) (Wales) 2003**. In parallel to this legislation, Welsh Government is proposing to introduce a new set of Independent Schools (Prohibition on Participation in Management) (Wales) Regulations. These Regulations prescribe the grounds on which a direction may be given prohibiting a person from taking part in the management of an independent school.

These three sets of Regulations form part of a wider framework of regulation, guidance and policies that work together to safeguard learners in independent schools. The proposals also seek to address specific concerns which have been identified regarding the limitation of Welsh Ministers' powers, particularly in helping to provide additional assurance that learners in all settings are properly safeguarded.

In undertaking this work, Welsh Government has balanced this review against the need to ensure that any proposed changes are reasonable and proportionate and do not limit unnecessarily the freedom independent schools have to organise themselves and deliver education.

What are the proposed changes?

Taking account of the views expressed in the Call for Evidence and through virtual stakeholder engagement events, officials are clear that there is general agreement that the Regulations require updating.

Through these activities, stakeholder feedback has identified common key areas

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that require strengthening, particularly around the governance and management of schools to ensure the safety and well-being of learners. In proposing changes to the Regulations, we will also consider the IICSA recommendations. These include, for example the requirement for ensuring that schools actively promote the safeguarding of learners, strengthening safeguarding training requirements for school leadership, staff and learners, and consideration of who should be DBS checked together with increasing the frequency of these checks.

Further, to help clarify who is ultimately responsible and accountable for maintaining and improving provision at a school, we propose to amend the wording in several Regulations to make it clear that ‘the proprietor’, and not ‘the school’, is ultimately responsible for compliance.

Proposed changes to the curriculum are set out in Standard 1 (The quality of education provided by the school).

Other proposed changes to ‘The quality of education provided by the school’ (Standard 1) are that the wording of some requirements should be amended to raise expectations by using terms such as ‘effective’ or ‘good’ rather than ‘satisfactory’ or ‘adequate’.

Across other Standards, since blended and hybrid working arrangements are increasingly common, proposed changes include that the Standards should reflect such changes in education and society. For example, referring specifically to the ‘classroom’ in a particular Regulation is not always appropriate.

More generally, in recognising the need to update the Standards, we are mindful that several of the Regulations reference specific documents by name, and that the document then becomes outdated. We therefore propose in the majority of cases to remove the named documents from the Regulations and replace them with references to the policy intent of the guidance to futureproof the Regulations and keep the wording current. To help schools understand and comply with the Regulations and other statutory requirements, we provide an Independent

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Schools' Registration and Operational Guidance handbook. We propose to issue an updated guidance document when the revised Regulations are made. This document will reference the appropriate guidance, key documents and relevant information. It will be updated regularly.

Associated with other priorities related to the Regulations is Welsh Government's proposed legislative requirement that staff with teaching responsibilities at independent schools register with the Education Workforce Council (EWC). It is anticipated that this requirement will come into force prior to, or at the same time as, the replacement of the Independent School Standards (Wales) Regulations 2003.

Another key priority is the phasing in of the **Additional Learning Needs and Education Tribunal (Wales) Act** (ALNET), which will also have an impact on the Regulations under review. We will therefore amend the relevant Regulations to reflect the requirements of ALNET.

The proposed legislative changes that follow, alongside the development of an intervention framework, will seek to collectively improve provision and outcomes for learners and help address the legislative gap which exists for Welsh Ministers not having sufficient powers of intervention.

The consultation process

The purpose of this consultation is to seek your views to the changes Welsh Government proposes making to the Independent School Standards (Wales) Regulations 2003, as well as those changes to the **Independent Schools (Provision of Information) (Wales) 2003** and the introduction of the **Independent Schools (Prohibition on Participation in Management) (Wales) Regulations**.

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The changes are set out below together with an outline of each change and an explanation of the reasoning behind each specific change. We are also seeking your views on whether there are any other changes we should be making to this updated suite of independent school regulations.

The responses we receive to the consultation exercise will help inform the final updated versions of the Independent School Standards (Wales) Regulations, the [Independent Schools \(Provision of Information\) \(Wales\) 2003](#), the [Independent Schools \(Prohibition on Participation in Management\) \(Wales\) Regulations](#) and the associated Registration and Operational Guidance.

Overarching Changes

We propose making three overarching changes in the new regulations that will replace the Independent School Standards (Wales) Regulations 2003. Firstly, we intend removing the named documents from the relevant Regulations and replacing them with references to the policy intent of the guidance to futureproof the Regulations.

Secondly and thirdly, we propose making overarching changes across the relevant Standards that relate respectively to the responsibility of the proprietor and phasing in of ALNET Regulations.

Responsibility of the proprietor

We propose that the Regulations in many of the relevant requirements should change from ‘the school must’ to ‘the proprietor must’. This approach is intended to clarify who is ultimately responsible for complying with the Standards. Across the Standards, examples of this change include:

- The quality of education provided by the school meets the standard if the proprietor ensures that the requirements are met.
- The proprietor ensures that there is drawn up and implemented effectively a written policy on the curriculum supported by appropriate plans and schemes of work.
- The proprietor ensures that the teaching at the school enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught.
- The proprietor ensures that the school has in place a framework for pupil performance to be evaluated, by reference either to the school's own aims as provided to parents or national norms, or to both.
- The spiritual, moral, social and cultural development of pupils at the school meets the standard if the proprietor ensures that the school promotes principles which actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- The welfare, health and safety of pupils at the school meet the standard if the proprietor ensures that arrangements are made to safeguard and promote the welfare of pupils at the school.
- The suitability of staff, supply staff and proprietors meets the standards if the proprietor ensures that the requirements are met.
- The manner in which complaints are handled meets the standard if the proprietor ensures that the school has and effectively implements a complaints procedure.

Phasing in of ALNET legislation

The phasing in of the ALNET legislation has resulted in some consequential changes to the Independent School Standards (Wales) Regulations 2003. We therefore wish to ensure that where appropriate within the new Regulations

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there are references to the phasing in of ALNET by amending the wording in the relevant requirements to include pupils who have individual development plans (IDPs) or statements.

Welsh Government understands that references to pupils with statements will need to be retained during the phasing in of the ALNET system.

Welsh Government has identified the following requirements in the Regulations which will need amending, if this has not already happened through other Regulations:

- Subject matter appropriate for the ages and aptitudes of pupils including those pupils with an individual development plan or statement.
- Where a pupil has an individual development plan or statement, education which fulfils its requirements.
- The proprietor ensures that the school provides effective education for all pupils to make progress including pupils with an individual development plan or statement and those for whom Welsh or English is an additional language.
- Particulars of educational and welfare provision for pupils with an individual development plan or statement and those for whom English or Welsh is an additional language.
- Following an inspection under section 163(1) of the 2002 Act a copy of the report of the inspection is published and maintained on the school's internet website and, by a date specified by the body who conducted the inspection. Where the registered pupil has an individual development plan or statement, the local authority with responsibility for maintaining the IDP.
- Where a pupil with an individual development plan or statement is registered at the school, the school must supply such information to the responsible local education authority as may reasonably be required for the purpose of the annual review of the IDP.

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Consultation Questions

OC.1 Do you agree with the overarching changes relating to the ultimate responsibility of the proprietor for compliance with the Regulations and to retain references to learners with statements during the phasing in of the additional learning needs tribunal (ALNET) system?

OC.2 Do you have any other comments in relation to the overarching changes?

Standard 1: quality of education provided

The proposed changes to Standard 1 are intended to improve the quality of education provided in independent schools by:

- seeking to raise the level of expectation
- focusing on the needs of individual learners
- including appropriate references to the Equality Act 2010
- introducing a new requirement that teaching at the school does not undermine the values of democracy, the rule of law and mutual respect and tolerance of those with different faiths and beliefs

Raising the level of expectation

Through the requirements of this Standard, Welsh Government wishes to raise the level of expectation of the quality of the education provision by the school. The intention is to raise the expected quality and standard of teaching, from 'adequate', 'satisfactory' and 'appropriate' to a level where the provision is 'good' or 'effective'.

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This approach is to make it clear that providing the minimum to comply with the requirements of the Standards is not enough.

We therefore propose to amend the wording of the Regulations so that when Estyn considers compliance with this Standard it is able to assess the impact of the provision on the pupils.

Specific examples of this change include:

- The proprietor ensures that there is drawn up and implemented effectively a written policy on the curriculum supported by appropriate plans and schemes of work, which provides for effective preparation of pupils for the opportunities, responsibilities and experiences of adult life.
- The proprietor ensures that the teaching at the school enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught.
- Enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught.
- Demonstrates good knowledge and understanding of the subject matter being taught.
- Utilises effectively resources of a good quality, quantity and range.
- Utilises effective strategies for managing behaviour and encouraging pupils to behave responsibly.

Meeting the needs of individual learners

Welsh Government does not want to undermine a school's ability to develop and deliver its own curriculum, but it does want the Regulations to make it clear that the curriculum they develop must demonstrate that it meets the needs of all individual learners.

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For a learner with ALN, the additional learning provision they require will be described in their individual development plan or statement.

Welsh Government expects schools to be aware of the needs and circumstances of all their learners not just those who have an individual development plan or statement. It wishes schools to consider equity of opportunity when designing their curriculum and to put in place support and interventions or make reasonable adjustments as necessary.

A school's curriculum should provide high-quality differentiated learning for all learners.

Welsh Government considers that this approach should be reflected in requirements, with the (specific) change of/change to:

- The proprietor ensures that there is drawn up and implemented effectively a written policy on the curriculum supported by appropriate plans and schemes of work.
- Subject matter appropriate for the ages and aptitudes of pupils including those pupils with an individual development plan or statement.
- The opportunity for all pupils to learn and make progress.

The Equality Act 2010

In the proposed curriculum changes, Welsh Government wants to include suitable reference to the Equality Act 2010 in relation to the school's personal, social and health education (PSHE) programme. This approach would mean where the Regulation explicitly states that PHSE should reflect the school's aims and ethos and encourage respect for other people, that it pays particular regard to the protected characteristics set out in the 2010 Act.

The proprietor ensures that there is drawn up and implemented effectively a

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written policy on the curriculum supported by appropriate plans and schemes of work, which provides for:

- Personal, social and health education which:
 - reflects the school's aims and ethos
 - encourages respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act

Requirement that teaching does not undermine the values of democracy, the rule of law and mutual respect and tolerance of those with different faiths and beliefs

Welsh Government proposes introducing a new requirement that teaching at the school does not undermine the values of democracy, the rule of law and mutual respect and tolerance of those with different faiths and beliefs. Examples of this include:

- The proprietor ensures that the teaching at the school enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught.
- Does not undermine the fundamental values of democracy and support for participation in the democratic process, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- Does not discriminate against pupils contrary to Part 6 of the 2010 Act.

The amendments to Standard 1 also include certain cross-cutting changes relating to the evolving delivery mechanisms and increasing element of blended learning.

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Blended and hybrid approaches to teaching and learning

Following the experience of moving teaching online during the COVID-19 pandemic, it is evident that several independent schools are choosing to continue offering a blended approach to teaching and learning. Blended or hybrid learning involves a balance of both on or off-site online digital learning and face-to-face learning in a classroom or other school building.

In response to this significant change to learning and teaching approaches, and in anticipation of this potentially becoming a more common trend within independent schools, Welsh Government wishes to clarify in the Regulations that schools are expected to meet within the requirements of the Standards irrespective of how the education and learning is delivered.

To aid the above approach, as teaching may not always be delivered in a classroom setting, Welsh Government proposes that any references to 'class time', 'classroom' and 'class' should be removed from the Regulations in all Standards, except those in Standard 5 which relate to the premises and boarding accommodation:

- The proprietor ensures that the teaching at the school enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught.
- Involves well planned lessons, effective teaching methods, suitable activities and wise management of time.
- Utilises effectively resources of a good quality, quantity and range.

Consultation Questions

1.1 Do you agree with the proposed changes to Standard 1?

1.2 Do you have any other comments in relation to the quality of education provided?

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

The proposed changes to Standard 2 are intended to strengthen Regulations around the spiritual, moral, social and cultural development of pupils.

The proposed changes introduce specific new requirements that:

- encourage pupils to respect the values of democracy, civil and criminal law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs
- preclude the promotion of partisan political views in teaching
- where political issues are brought to the attention of pupils, taking such steps as are reasonably practicable to ensure they are offered a balanced presentation of opposing views
- clarify the meaning or add more detail to the Regulation

Respect for the values of democracy, civil and criminal law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs

Welsh Government considers that this proposal should be reflected in requirements, with the change of/change to:

- the spiritual, moral, social and cultural development of pupils at the school meets the standard if the proprietor ensures that the school promotes principles which actively promotes the fundamental British values of

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democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs

- enable pupils to distinguish right from wrong and to respect the civil and criminal law
- encourage respect of other people playing particular regard to the protected characteristics set out in the 2010 Act

Precluding the promotion of partisan political views in teaching and, where political issues are brought to the attention of pupils, taking such steps as are reasonably practicable to ensure they are offered a balanced presentation of opposing views

We propose three new requirements in the Regulations about the requirements for the spiritual, moral, social and cultural development of pupils:

- The spiritual, moral, social and cultural development of pupils at the school meets the standard if the proprietor ensures that the school promotes principles which actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- Preclude the promotion of partisan political views in the teaching of any subject in the school.
- Take such steps as are reasonably practicable to ensure that where political issues are brought to the attention of pupils:
 - while they are in attendance at the school
 - while they are taking part in extra-curricular activities which are provided or organised by or on behalf of the school
 - in the promotion at the school including through the distribution of promotional material; of extra-curricular activities taking place at the school or elsewhere

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They are offered a balanced presentation of opposing views.

Clarifying the meaning or adding more detail to the Regulation

We propose to amend the requirement in paragraph 2(c) of the Schedule to make the reference to 'community life' less ambiguous. The intention of the revised wording is that pupils should be encouraged to contribute positively to the school's community as well as to the local community and society more widely.

- Encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute positively to the lives of those living and working in the locality in which the school is situated and to society more widely.
- Provide pupils with a broad general knowledge of public institutions and services in Wales and the United Kingdom.

Consultation Questions

2.1 Do you agree with the proposed changes to Standard 2?

2.2 Do you have any other comments in relation to the spiritual, moral, social and cultural development of learners?

Standard 3: welfare, health and safety of pupils

The changes we propose to Standard 3 seek to protect further the welfare, health and safety of pupils by:

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- introducing a requirement for the proprietor to actively promote the well-being of learners
- strengthening arrangements for safeguarding training, including recording training details
- introducing a requirement for reviewing school policies
- refocusing the Regulation on behaviour (3.[3][d]) towards positive approaches, and to take account of guidance about reducing restrictive practices

Requirement for the proprietor to actively promote the well-being of learners

Welsh Government proposes to address a gap in the current Regulations which is to ensure that those with leadership and management responsibilities, including members of the governing and proprietorial bodies, take a more active role in fulfilling their responsibilities to promote the well-being of pupils.

Welsh Government therefore wishes to create a new requirement:

- for the proprietor to ensure that everyone who has leadership and management responsibilities in the school actively promotes the well-being of the learners

When there are repeated, multiple or serious failures by an independent school to meet one or more of the Standards, the evidence can suggest that this is due to weaknesses in the school's management structure and governance processes. Experience of dealing with such issues in an independent school in north Wales in recent years has demonstrated that addressing these weaknesses is of paramount importance. Consequently, this requirement will also enable Welsh Government to take action, where appropriate, if there appear to be failings in the school's management, leadership or governance which result in learners being put at risk of harm.

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Strengthening arrangements for safeguarding training

We wish to take account of the consensus view from the Call for Evidence, which confirmed the need to strengthen safeguarding training requirements, including mandatory safeguarding training and a commitment by the school to review and update the training regularly. We also want to action Recommendation 4 of the IICSA inquiry, which also focused on the need to improve safeguarding training and awareness-raising.

To strengthen the current requirement and respond to the IICSA recommendations, Welsh Government wishes to set new requirements under Standard 3 so that:

- everyone in a school, staff, volunteers and learners, receive appropriate safeguarding training
- proprietors maintain a record of training provided to staff, volunteers and the governing body to demonstrate a commitment to continual professional learning.

Welsh Government will provide more detail about the type and level of training that is appropriate for different groups of staff, volunteers and learners in the statutory guidance **Keeping Learners Safe**. It will also provide information about sources of training, and signpost other sources of advice and help in the revised Independent School Registration and Operational Guidance. However, Welsh Government does not want to prescribe who provides the training, who receives what training, and when or how often training is provided. Individual schools will continue to have the flexibility to decide on the practical implementation and delivery of these requirements.

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New requirement for reviewing school policies

We recognise that policies that are regularly reviewed and adjusted in the light of experience and good practice are the basis for effective safeguarding within a school. As a result, we want a requirement to be placed on the proprietor to:

- maintain a record to evidence that the school's policies are reviewed and updated regularly to reflect changes in relevant legislation, guidance and policy

The school's policies should therefore be 'living documents', to be consulted and used as the foundation of good practice.

Welsh Government would not be prescriptive about timeframes for these reviews, as they will differ from policy to policy and the type of establishment. What it will expect is that the proprietor can provide evidence that all policies are reviewed regularly and kept up to date so that they reflect the latest guidance and advice and are appropriate for the setting.

Refocusing the Regulation on behaviour (3.[3][d]) towards positive approaches

Welsh Government proposes that the wording of this Regulation is reconsidered so that its focus is on encouraging good behaviour rather than on sanctions, punishment and penalties. Welsh Government believes that the requirement should reflect a positive approach to promoting good behaviour whilst still acknowledging that measures must be taken in the event of serious misbehaviour and that the proprietor ensures that the school keeps a written record of the sanctions imposed upon pupils for serious disciplinary offences.

When developing sanctions, schools should pay regard to the Welsh

Government's guidance on the reduction of restrictive practices. Schools will also be required to develop a policy that outlines conditions for the use of restrictive practices in any of their services that has regard to the guidance issued by Welsh Government ([Reducing Restrictive Practices Framework](#)).

Consultation Questions

3.1 Do you agree with the proposed changes to Standard 3?

3.2 Do you have any other comments in relation to the welfare, health and safety of learners?

Standard 4: the suitability of the proprietor and staff

Given the importance of proper checks being made on people who work in schools or who are proprietors, Welsh Government proposes to strengthen the Regulations in Standard 4 by:

- extending those who should be subject to DBS checks
- increasing the frequency of carrying out DBS checks

Extending those who should be subject to DBS checks

Based on the responses received to the Call for Evidence and recommendations made by IICSA, Welsh Government proposes to strengthen the Regulations about who should be subject to DBS checks as indicated below.

Firstly, by requiring the proprietor to ensure that supply staff offered by an

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employment business have the appropriate DBS checks.

Secondly, by extending those who need to have appropriate DBS checks to include:

- school governors and those with leadership and management responsibilities

The rationale for the amendment to the regulations that DBS checks should be mandatory for school governors is because they have access to personal and in some instances highly confidential information about learners and have duties to ensure safeguarding and matters of child protection. Further, Welsh Government considers that, due to the different structures and ways independent schools are managed and governed, it is also appropriate to refer to those with leadership and management responsibility.

Regarding host families or guardians, those boarding schools who welcome international learners require the pupil to have a 'guardian' based in the UK. Welsh Government wishes to introduce a requirement that the school's proprietor is responsible for ensuring that the host or guardians organised by the school to host pupils are subject to the appropriate DBS check. The proprietor will be required to maintain a record to confirm that these checks have been carried out.

In situations where families arrange a guardian or host with a third-party company, Welsh Government will provide advice in guidance, that the proprietor should demonstrate the same level of care and concern and should take all reasonable steps to ensure that the arrangements made by the learner's family or guardian do not place the learner at risk.

Welsh Government also wishes to require the proprietor to ensure that any contractor including peripatetic staff, temporary or supply staff (other than through an employment business or agency) or an employee of the contractor

who works directly with learners is subject to the appropriate level of DBS check. The regulations prescribe that where there is no current DBS this is to be undertaken within the first six months of the updated regulations coming into force.

New requirements to increase the frequency of carrying out DBS checks and introduce the need for an initial DBS check within six months of the Regulations coming into force

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.

The majority of responses to the Call for Evidence agreed that increasing the frequency of these checks would contribute to improving the safety of all learners. For example, it is common practice across the social care sector and several maintained schools and local government education services for DBS checks to be updated every three years.

We have already been encouraging this approach informally as good practice, but now propose to formalise it as policy through Regulation by introducing a requirement:

- to renew DBS checks every three years
- for the proprietor to keep a record which shows that DBS checks for all staff / volunteers have been renewed every three years
- a new requirement to have a first check within 6 months of the Regulations coming into force

We do not wish to prescribe how DBS checks are undertaken. If the member of staff is signed up to the renewal services, schools should have the choice to use

the service to check information for those individuals otherwise they should be required to conduct a new DBS check at the appropriate level.

New requirement for registration with the Education Workforce Council (EWC)

A second **Welsh Government public consultation** has taken place recently proposing that staff employed to teach in independent schools and learning support workers should register with the EWC.

Consultation Questions

4.1 Do you agree with the proposed changes to Standard 4?

4.2 Do you have any other comments in relation to the suitability of the proprietor and staff?

Standard 5: premises of and boarding accommodation at schools

The proposed changes to the premises of and boarding accommodation at the school relate primarily to the:

- ultimate responsibility of the proprietor for compliance with the Regulations
- wording with regard to the social model of disability

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Wording with regard to the social model of disability

Welsh Government is considering the precise wording of some of the requirements relating to 'special needs' which appear at odds with the social model of disability adopted by the Welsh Ministers in 2003.

Welsh Government believes that the reference to 'special needs' in the current Standards refers to pupils with impairments not pupils with SEN or ALN.

Consequently, wherever possible Welsh Government proposes to change the wording to put the focus on the need for buildings and all facilities including play areas within the school to be accessible ensuring that they can be used on a basis of equality by all learners. Learners with impairments should also have access to learning and extra-curricular activities on an equal basis with all other learners.

5g There is sufficient access so that emergency evacuations can be accomplished safely for all pupils, particularly those with special requirements.

5h Access to the school allows all pupils, including those with special requirements, to enter and leave the school in safety and comfort.

5j Having regard to the number, age and needs (including any special requirements) of pupils, classrooms are appropriate in size to allow effective teaching and do not compromise health and safety.

5k There are sufficient washrooms for staff and pupils, including facilities for pupils with special requirements, taking account of the 1999 Regulations.

5r The furniture and fittings are appropriately designed for the age and needs (including any special requirements) of all pupils registered at the school.

Consultation Questions

5.1 Do you agree with the proposed changes to Standard 5?

5.2 Do you have any other comments in relation to the premises of and boarding accommodation at schools?

Standard 6: the provision of information

Welsh Government is proposing overarching revisions to Standard 6. These changes relate to:

- alterations to the type of contact details school proprietors must provide to Welsh Government
- a requirement that inspection reports must be published on the school's website and made available to parents and, where appropriate, to local authorities
- a requirement to make specific information available to parents – including term dates and the most recent results of public examinations

Contact details school proprietors must provide to Welsh Government

Paragraph 29(2)b With regard to the type of contact details school proprietors must provide Welsh Government, the revised requirements specify that where the proprietor is an individual, the information should include that person's:

(aa) full name

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(bb) direct business email address and

(cc) telephone number (during term time and non-term time)

(dd) correspondence address (during term time and non-term time)

Requirement that inspection reports must be published on the school's website and made available to parents and, where appropriate, to local authorities

Paragraph 29(4) of the Schedule it is being proposed it is revised to state explicitly that following an inspection under Section 163 (1) of the 2002 Act, a copy of the report of the inspection (if it has been sent to the proprietor or the school) is published and maintained on the school's internet website and, by a date specified by the body who conducted the inspection, is provided to:

(a) the parents of every registered pupil

(b) where the registered pupil is looked after by a local authority, the local authority that is responsible for looking after them

(c) where the registered pupil's placement is funded wholly or partly by a local authority, the local authority that provides the funding and

(d) where the registered pupil has an individual development plan or statement, the local authority with responsibility for maintaining the individual development plan or statement

Where a school does not have a website, a copy of the report of the inspection must be provided to the parents of every registered pupil and, where appropriate, to all relevant local authorities.

Welsh Government is also proposing to make specific changes to the provision of information Standard which it considers will contribute to the welfare, health and safety of pupils. These requirements relate to:

- publication of term dates
- publication of the most recent results of public examinations and
- the requirement to inform Welsh Government of any proposed changes or alterations to school premises

Requirement to make specific information available to parents, including term dates and the most recent results of public examinations

Publication of term dates

Welsh Government has recent experience of an independent school refusing to provide information about their term dates in response to a request to do so by Welsh Government. The lack of access to this information makes it difficult for inspectorates to organise inspection activities, especially in circumstances when unannounced inspections are necessary because there are safeguarding concerns. Knowing when schools are open will help the Welsh Government and inspectorates prioritise and make the best use of their time and resources.

To avoid similar situations recurring in the future, Welsh Government wishes to make it a requirement that schools publish the term dates for the current and next academic year on their website and any other planned periods of closure such as training or emergency closure, for example due to health reasons.

Alternatively, if schools do not have a website, or the closure is at very short notice, they should be required to provide Welsh Government with this information so that it can be shared with Estyn and Care Inspectorate Wales

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(CIW).

Public Examination Results

Welsh Government proposes to amend the wording of this requirement (6)(2)(i) to make it clear that the information provided by the school, contains the most recent results of any public examinations taken by pupils.

Learning from the experience of the past two years, Welsh Government wishes to make it clear that schools should use the most recent performance results whether they were achieved through traditional examinations or other measures such as predictive grades used during the COVID-19 pandemic.

The rationale for these revisions is to avoid a situation where a school is using historic information that may not reflect the current levels of their pupils' attainment, which could be misleading for parents of current learners and parents of prospective learners.

Requirement to inform Welsh Government of proposed changes or alterations to school premises

Welsh Government proposes to revise the Regulations to regularise current practice around the approval of changes to school buildings.

In the current published guidance, independent schools are requested to notify Welsh Government if there are any changes or alterations to the school premises under the material change process. However, this is not provided for in section 162 of the Education Act 2002.

Part of the initial registration process for a new independent school requires an Estyn Additional Inspector to check that the buildings and other premises meet the requirements of Standard 5. Any change or alterations may mean that the

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buildings no longer comply with the requirements set out in the Standard. It is therefore important that Welsh Government is informed of any proposed changes or alterations to premises and buildings to avoid a school inadvertently failing to comply with Standard 5.

Welsh Government proposes to require schools to inform Welsh Government of any proposed changes in advance of the changes being implemented.

Consultation Questions

6.1 Do you agree with the proposed changes to Standard 6?

6.2 Do you have any other comments in relation to the provision of information?

Standard 7: the manner in which complaints are to be handled

The main intention of the proposed amendments to this Standard is to strengthen the governance of the school and improve the level of information available to pupils and parents.

Strengthening governance and improving the level of information available to pupils and parents

Welsh Government considers that this intention should be reflected in requirements, with the specific changes of, or changes to, set out below. These include changes to the wording which make reference to pupils and boarders as well as parents.

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(7) The manner in which complaints are handled meets the standard if the proprietor ensures that the school has and effectively implements a complaints procedure:

(7)(b) which is made available on the school's website or where the school does not have a website, it is provided to pupils or boarders, the parents of pupils or boarders and of prospective pupils or boarders at the school

(7)(d) which provides an opportunity for a complaint to be made and considered initially on an informal basis

(7)(e) where the parents, pupils or boarders are not satisfied with the response made in accordance with paragraph (d) or wish to pursue a formal complaint establishes a procedure for the complaint to be made in writing

(7)(f) where the parents, pupils and boarders, are not satisfied with the response to the complaint made in accordance with paragraph (e) makes provision for a hearing before a panel appointed by or on behalf of a proprietor and consisting of at least three people who were not directly involved in the matters detailed in the complaint.

(7)(h) which allows for the parents, pupils or boarders to attend and to be accompanied at a panel hearing if they wish

(7)(j) which provides for written records to be kept of all complaints including whether they are resolved at the preliminary stage or proceed to a panel hearing and any action taken by the school as a result of those complaints and whether they were upheld

Consultation Questions

7.1 Do you agree with the proposed changes to Standard 7?

7.2 Do you have any other comments in relation to the manner in which complaints are to be handled?

Other proposed legislation

The Independent Schools (Provision of Information) (Wales) Regulations 2003

The proposed amendments to [The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003](#) relate to the:

- application to register a new school
- format for application for registration of an independent school and for completion of the annual return
- information required in the return to be submitted within the first three months of the admission of pupils
- information required in an annual return

Application to register a new independent school

Welsh Government wishes to amend the application process to register a new independent school so that it applies best practice, as recommended in the IICSA report into residential boarding schools.

When registering Early Years Provision with CIW, the application process collects information about links with other regulated services and other businesses interests which is not directly considered as part of the registration of an independent school. Adding a requirement for applicants to disclose other businesses interests and links with other regulated services when they apply to register an independent school will provide valuable additional information when

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determining applications.

Welsh Government therefore proposes to make the changes outlined below to the Provision of Information Regulations to require applicants to provide additional information when they apply to register a new school. Currently individuals are required to provide their full name (including previous names), usual residential address, telephone number, date of birth and national insurance number. Welsh Government wishes to add the following to the information an individual proprietor is required to provide at the application stage:

- email address
- employment history and experience
- details of any current or previous involvement in other regulated services in the UK
- details of other business interests

These changes will provide background information about those applying to open a school, indicate their suitability to be a proprietor and help establish if the individual has capacity to run the proposed school successfully.

Welsh Government also wishes to amend the regulations relating to DBS certification by requiring the individual to provide a DBS certificate which must be less than three months old at the time of submitting the application or the applicant must provide evidence that he/she is signed up to the DBS Updates Service. This service allows Welsh Government to check the status of the individual's DBS check online.

In addition to the information that members of the corporation, firm or body is currently required to provide Welsh Government wishes to add:

- details of any previous or current involvement in other businesses.

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Welsh Government also wishes to add National Insurance details to the list of information a member is required to provide.

Where the proprietor is not an individual

For all applications where the proprietor is not an individual, Welsh Government will require information about the 'Chair'. A 'Chair' is defined in an amendment to [the Standards Regulations](#).

Regulation 3: Format of application for registration of an independent school

Regulation 3(a): Currently schools are required to apply in writing for registration as an independent school although, in practice, Welsh Government has been receiving applications electronically for several years.

Welsh Government wishes to amend the regulations so that electronic applications become the default. Advice will be provided in guidance about how to submit an application.

Regulation 5: Format for annual return

Welsh Government also proposes to update Regulation 5(2)(a) to reflect that the return is now online as opposed to the previous written return.

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Part 3: Information required in the return to be submitted within the first three months of the admission of pupils

Disclosure and Barring Service (DBS) Certificates

Welsh Government wishes to make it clear that the appropriate DBS checks have been carried out at the time of appointment in line with the advice in [Safeguarding Children in Education](#).

Where the person employed at the school is a person in respect of whom the Secretary of State must issue a DBS certificate under section 113B of the Police Act 1997 in response to a duly made application for such a certificate, confirmation that an appropriate DBS certificate in respect of the person is available to the proprietor.

Part 4: Information required in an annual return

Requirement 10(d) updating DBS checks

Dependent on the result of the consultation on the proposal in Standard 4 to require DBS checks to be renewed at least every three years, a new requirement may need to be introduced requiring proprietors to confirm that these checks have taken place.

Tier 4 sponsored pupils

Independent schools with boarding provision often hold a licence issued by UK Visas and Immigration to sponsor international students to come to the UK under the General (Student) or Child Student routes. This is often referred to as

a Tier 4 sponsor.

For some time, Welsh Government has been requesting schools to provide the total number of Tier 4 sponsored pupils at the school in their annual return. We would now like schools to let us know the number of students who are in the UK on either a General or Child Tier 4 licence.

Learning from the experience during COVID-19, when restrictions on international travel from 'red list' countries took place, it would have been helpful from a policy and planning perspective if we held more information about international pupils in particular the country they have travelled from. This would have helped us target our support to schools who had pupils who needed specific help to travel to and from their school.

Welsh Government therefore wishes to regularise the situation of collecting the number of Tier 4 sponsored pupils, which is currently provided by the goodwill of schools, by adding a requirement in the Regulations for schools to provide in the annual return the total number of General or Child Tier 4 sponsored learners at the school.

The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations

Welsh Government proposes to introduce Regulations that prescribe the grounds on which a direction may be given under [section 167A](#) of the Education Act 2002 ("a section 167A direction") prohibiting a person from taking part in the management of an independent school in Wales, or placing a restriction on a person's ability to do so.

Section 167A directions may be given in respect of a person who:

- has been convicted of

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- been given a caution in respect of
- is subject to a relevant finding in respect of a relevant offence, or
- has engaged in relevant conduct
- if the appropriate authority (the Welsh Ministers) considers that the person is therefore unsuitable to take part in the management of an independent school (regulation 2).

In such circumstances, inclusion on the children's barred list automatically disqualifies the individual from being a governor or proprietor of any school.

Consultation Questions

OPL.1 Do you agree with the proposed amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and Independent Schools (Prohibition on Participation in Management) Regulations 2023?

OPL.2 Do you have any other comments in relation to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and Independent Schools (Prohibition on Participation in Management) Regulations 2023?

Duty to report a child at risk of harm

Welsh Government is considering whether to make mandatory the requirement on proprietors, governors or trustees of independent schools and all staff and volunteers to inform the local authority where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm. This requirement is in response to recommendations from the [Residential Schools Investigation Report](#) published by the Independent Inquiry into Child Sexual Abuse.

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This duty to report where a pupil is suspected of being at risk:

- is promoted as effective practice within existing **statutory guidance** on reporting children at risk
- would support **guidance on handling allegations of abuse** against teachers and others staff and
- would be consistent with the **Wales Safeguarding Procedures**

It is also consistent with the new requirement being proposed in the regulatory changes to the Independent School Regulations, to make arrangements to safeguard and promote the welfare of pupils at the school.

Consultation Questions

DTR.1 Do you agree with the proposal to introduce a requirement on proprietors, governors or trustees of independent schools and all staff and volunteers to inform the local authority where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm?

DTR.2 Do you have any other comments in relation to this proposal or its potential impacts?

Consultation questions

Please use the consultation response form to respond to the above questions.

Overarching Changes

OC.1 Do you agree with the proposed overarching changes relating to the

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ultimate responsibility of the proprietor for compliance with the Regulations and to retain references to learners with statements during the phasing in of the additional learning needs and education tribunal (ALNET) system?

OC.2 Do you have any other comments in relation to the overarching changes?

Standard 1: quality of education provided

1.1 Do you agree with the proposed changes to Standard 1?

1.2 Do you have any other comments in relation to the quality of education provided?

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

2.1 Do you agree with the proposed changes to Standard 2?

2.2 Do you have any other comments in relation to the spiritual, moral, social and cultural development of learners?

Standard 3: welfare, health and safety of pupils

3.1 Do you agree with the proposed changes to Standard 3?

3.2 Do you have any other comments in relation to the welfare, health and safety of learners?

Standard 4: the suitability of the proprietor and staff

4.1 Do you agree with the proposed changes to Standard 4?

4.2 Do you have any other comments in relation to the suitability of the proprietor and staff?

Standard 5: premises of and boarding accommodation at schools

5.1 Do you agree with the proposed changes to Standard 5?

5.2 Do you have any other comments in relation to the premises of and boarding accommodation at schools?

Standard 6: the provision of information

6.1 Do you agree with the proposed changes to Standard 6?

6.2 Do you have any other comments in relation to the provision of information?

Standard 7: the manner in which complaints are to be handled

7.1 Do you agree with the proposed changes to Standard 7?

7.2 Do you have any other comments in relation to the manner in which complaints are to be handled?

Other proposed legislation

OPL1 Do you agree with the proposed amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and Independent Schools (Prohibition on Participation in Management) Regulations 2023?

OPL2 Do you have any other comments in relation to the Independent Schools (Provision of Information) (Wales) Regulations 2023 and Independent Schools (Prohibition on Participation in Management) Regulations 2023?

Duty to report a child at risk of harm

DTR.1 Do you agree with the proposal to make mandatory the existing requirement on proprietors, governors or trustees of independent schools and all staff and volunteers to inform the local authority where they know or reasonably suspect that a child, who is a pupil at the school, is experiencing or is at risk of abuse, neglect or harm?

DTR.2 Do you have any other comments in relation to this proposal or its potential impacts?

How to respond

Responses to this consultation should be emailed/posted to the address below to arrive by 17 July 2023 at the latest.

To help you complete this consultation we have set out the main areas where changes to the Independent School Standards (Wales) Regulations 2003 are being proposed. We have also set out the proposed changes to other related

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legislation including the Provision of Information Regulations and the Prohibition on Participation in Management Regulations. For ease of reference, we have also set out the questions we are asking you to respond to under each section.

Submit your response by midnight 17 July 2023 in any of the following ways:

- Complete an online form
- Download, complete our response form and email it to: IndependentSchools@gov.wales
- Download, complete our response form and post to:

Independent Schools Branch
Support for Learners Division
The Education Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company).

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Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, 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. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

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Data Protection Officer:

Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

email: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
K9 5AF

Tel: 01625 545 745 or 0303 123 1113

Website: ico.org.uk

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