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## Ymateb i Ymgynghoriad / Consultation Response

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### Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Welsh Parliament on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

## Response

### Introduction

Estyn welcomes the opportunity to comment upon the call for evidence in the review of the independent schools' regulations and guidance.

Overall, we agree with the need to review and strengthen the current arrangements for regulating independent schools in Wales.

- We have outlined ways in which the current guidance could be updated and propose the need for additional guidance to support schools.
- We support the need to strengthen safeguarding arrangements by increasing the frequency of DBS checks and broadening the range of people subject to such checks. In addition, we support the provision of training materials bespoke to the independent sector.
- When considering the place of learner voice, we do not feel that this is an area that requires strengthening within the regulations.
- We welcome the proposal to strengthen leadership and management of independent schools and feel this should be achieved through regulation rather than guidance.
- The role of Welsh Ministers in intervening when independent schools do not comply with the regulations is critical. We welcome the opportunity to contribute to the development of a framework of intervention.
- We have indicated possible changes to standard 1 'Quality of Education', to reflect changes in society and the move to online or hybrid working. We suggest the regulations should go further, to include the registration of online schools.
- We welcome the proposal to require all staff in independent schools to register with the EWC.
- Whilst realising that this call for evidence may be followed by a call for more detailed comment on the current regulations, we have taken this opportunity to outline additional observations. We have indicated areas where we feel the standards require amending, strengthening and accurately reflecting current Welsh guidance.

## Consultation questions

### **Question 1 – What changes can we make to the *Independent schools registration and operation guidance* to make it a more useful source of advice and information for independent schools and prospective independent schools?**

The independent schools' registration and operation guidance is the document that all proprietors are referred to if they intend to open an independent school. The document therefore needs to be easily accessible, include clear guidance and refer to the most up to date policies and contact details.

The existing document would benefit from being updated including:

- Making links to the latest Welsh Government guidance
- Updating section 4 to reflect the ALNET Act

- Updating contact details in Welsh Government
- Replacing references to CSSIW with CIW
- Providing links to the national minimum standards for boarding schools

Once updated, this remains an important and useful document for proprietors to refer to. As suggested in the call for evidence the guidance may benefit from setting out more clearly the requirements at different stages such as:

- Initial registration
- Follow up to registration, and
- Ongoing requirements

In addition, Welsh Government may wish to consider publishing a more detailed document to support schools to understand the requirements of each of the independent school standards both when they register and once they are operational. A link to a similar document produced by the Department for Education is below.

[The Independent School Standards - Guidance for independent schools \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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

Currently once initial enhanced DBS checks are made on proprietors and staff there is no requirement for this to be repeated while they remain in post. However, to ensure the continued safety of all learners we believe it would be helpful if there was a requirement to update these checks, for example every three years, or after a period of extended absence lasting a term or more, for example when on a secondment or sabbatical. Regular, three years checks, in addition to the current material change provision for when the registered proprietor changes or the chair of the proprietor body changes, would strengthen the process of assessing the suitability of proprietors and staff. Our experience is that independent schools do not always make a material change request to Welsh Government for a change of proprietor or chair of the proprietor body. The requirement for a three year renewal period should help to manage this risk more effectively.

In addition, leaders could be required to ask staff to complete an annual disqualification declaration. As exemplified here [Disqualification-Declaration-Form-issue-4.pdf \(newforestcare.com\)](https://www.newforestcare.com)

## **Question 3 – Are there any other people ([Find out which DBS check is right for your employee - GOV.UK \(www.gov.uk\)](https://www.gov.uk)) who should be subject to DBS or other checks before they can work or come into regular contact with learners at the school?**

To ensure the safety of all learners, we believe that all people who have regular contact with learners should be subject to enhanced DBS checks, providing this meets the definitions for 'regulated activity'.

In the case of independent schools, in addition to the requirements for all teaching and non-teaching staff to be subject to these enhanced checks, we believe that regular updated checks should also be a requirement of any peripatetic staff, therapeutic staff, staff employed by the school to provide cover and host families organised by the school.

In addition, it should be the responsibility of school leaders to ensure that appropriate checks have been made when the services of external organisations are used. This requirement could be made an explicit requirement in the independent school standards.

**Question 4 – Would you find a new training module on the requirements of *Keeping learners safe* specifically aimed at independent schools helpful and what, over and above what is already available, should be included in the module?**

Evidence from inspection confirms that most independent schools undertake appropriate safeguarding training for all staff. However, it is our experience that independent schools and their staff may become disengaged if they do not feel that training provided is relevant to them. In addition, these schools may experience difficulties accessing support from local authorities. We therefore believe it would be useful to create training modules that are bespoke to the independent sector and provide a minimum baseline of support in this area. In our experience, the areas that would benefit from clearer guidance include clarity around the role of proprietors and headteachers /principals and when safeguarding concerns relating to both pupils and staff should be referred beyond the school. In addition, schools would benefit from the use of sector specific 'scenarios' to discuss with their staff and consider 'what action should be taken'.

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

The measures to safeguard learners in independent schools should be comparable to those in maintained settings. The requirements should be clearly set out in an accessible format, such as the training modules mentioned in Question 4. Possibly the completion of these training modules (and a commitment to review them regularly, for example annually) should be a prerequisite for registration?

Welsh Government may also wish to consider strengthening guidance on the use of restrictive practice and restraint. This is particularly relevant given the changes to Welsh Government guidance in reducing restrictive practices.

In addition, whilst there are no preferred training organisations to deliver safeguarding training, a few independent schools struggle to identify appropriate organisations. Welsh Government, in consultation with the Safeguarding in Education Group (SEG) and regional safeguarding boards could provide a list of suitable training organisations in the updated registration and operation guidance and seek to strengthen the relationship between local authorities and independent schools in relation to accessing safeguarding training and professional advice.

Welsh government may also wish to consider including in regulations a statutory duty for the proprietor to inform Welsh Government, Estyn and CIW, if appropriate, within a defined time limit of a Section 5 investigations (Wales Safeguarding Procedures - multi-agency investigations regarding concerns about practitioners and those in positions of trust).

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

In the call for evidence it is recognised that some schools have systems in place to effectively gather the views of learners in the development of policies that impact them. From our inspection work we can confirm that most schools seek to ensure that the voice of learners is included in relevant policies.

Welsh Government may wish to further strengthen this aspect of school life by recommending that schools have a school council, as required in the maintained sector

- (1) The membership of the school council must consist solely of registered pupils at the school.*
- (2) The governing body of a school and the head teacher must make arrangements for at least one registered pupil of each year group, from Year 3 and above, to be elected to membership of the school council.*

In a similar way the guidance could promote the appointment of associate pupil governors (where a governing body is in place) as required in the maintained sector. In schools which cater for pupils with additional learning needs whose provision is set out in an individual development plan (IDP), Welsh Government may wish to recommend that learners have suitable opportunities to contribute to the planning and review of this provision, in line with the emphasis on person-centred practice set out in the ALN Code.

However, if the decision was made to strengthen this requirement then the phrase 'policies and decisions that impact upon them' would need to be clarified so that schools are clear which policies would require learner input.

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

Regarding the wording of the standards, as identified in the call for evidence it would be useful if the generic phrase 'the school', was replaced by 'proprietor' or 'headteacher' as appropriate to ensure that it is clear where responsibilities lie.

Welsh Government may wish to consider a standard relating to the quality of leadership and management of schools (standard 8), as found in the independent school standards in England.

[The Independent School Standards - Guidance for independent schools \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

It is made clear that this standard does not seek to tell schools how to govern or manage themselves. However, if any other standard is not met then this may indicate weaknesses in leadership and management that could be addressed through this additional standard. We have identified in our school reports and our Annual Reports ([Estyn Annual Report 2019-2020 \(gov.wales\)](#)) that where schools fail to focus appropriately on important areas of the school's work, such as the quality of teaching this is most frequently due to shortcomings in leadership.

In addition, Welsh Government could consider making it possible for senior leaders in independent schools to access the National Professional Qualification for Headship (NPQH) qualification and resources from the National Academy for Education Leadership (NAEL).

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

We believe that the additional steps to strengthen leadership, management and governance of independent schools should be achieved through the regulations rather than through guidance. We believe that by strengthening the regulations in this aspect shortcomings will be more clearly identified and Welsh Government will be able to take swift action where leaders fail to respond to the shortcomings in a suitable way and strengthen accountability at all levels. In England, Standard 8 relates to the quality of leadership and management and is met if the proprietor ensures that persons with leadership and management responsibilities at the school:

- demonstrate good skills and knowledge appropriate to their role so that the independent school standards are met consistently;
- fulfil their responsibilities effectively so that the independent school standards are met consistently; and
- actively promote the well-being of pupils.

In addition, Part 8c of standard 8 provides for the proprietor to ensure that persons with leadership and management responsibilities at the school actively promote the well-being of pupils. In Wales, the absence of Standard 8 has meant the Welsh Government has less drivers in place to ensure that proprietors, governors and leaders take a more active role in fulfilling their responsibilities to promote the wellbeing of children and young people. Standard 8 could provide the basis for enabling us to call this evidence forward in more

routine inspections, where appropriate, in order to evidence the actions taken by leaders and managers to fulfil their responsibilities.

**Question 9 – What actions should be available to the Welsh Ministers to take and in what circumstances? (For example if a school fails to meet one or more of the standards, or if a school fails to implement an action plan, or if a school fails to comply with a direction issued by the Welsh Government.)**

Whilst recognising that Welsh Government currently can impose restrictions on independent schools and ultimately remove them from the register of independent schools, we welcome the opportunity to contribute to developing a framework of intervention for Welsh Government. Such a framework could include a stepped approach, with timescales for each stage so that all independent schools are clear of the expectations at each stage and any possible sanction/ intervention from Welsh Government.

Where we identify a failure to meet the Independent School Standards, the Welsh Government is prompt in requesting an action plan and working with us to seek advice on the appropriateness of the actions planned and to subsequently monitor progress made by the school. Usually, this is sufficient to bring about the improvement needed in a timely manner. In a few cases in recent years, the Welsh Government has used its enforcement powers to limit new placements and reduce the age range in independent schools causing concern. We support this necessary action completely. However, the full range of regulatory powers relating to enforcement is rarely used in Wales (i.e. taking steps to remove the registration of a school) but is not usually required. There is scope to explore whether any further enforcement powers could be introduced, where for example a school is largely providing a very good educational experience for pupils but leaders, governors, trustees or the proprietor are not fulfilling their duties or responsibilities. For example, local authorities are able to appoint additional governors or establish an Interim Executive Board in relation to maintained schools and CIW have the power to cancel the designation of a person as the responsible individual for a care home in certain circumstances.

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

In considering how Standard 1 'Quality of Education' may need to be updated, we make the following observations:

- It would be helpful if there was a definition of full-time education, or an indication of expected contact hours [1(2)(a)(i)]

- The standard will need to be updated to reflect changes made in the ALNET Act i.e. reference to statements [1(2)(b), 1(2)(e)]
- Welsh Government may wish to add digital competency to the list of necessary skills in [1(2)(c)]
- Should references to appropriate careers guidance be for all ages and not just secondary age pupils? [1(2)(g)]. It could also refer to careers and work related experiences, as in the Curriculum for Wales.
- Should RSE be made a mandatory curriculum requirement as in the maintained sector?
- Throughout this standard should the level of expectation be raised from 'appropriate', 'adequate' or 'satisfactory' to Good.

This question relates to Standard 1 'Quality of Education'. We have made additional comments relating to other standards in Question 16.

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

Estyn's evidence from our engagement with schools confirms that there are schools that teach wholly online and those who, because of the experiences during the pandemic, will continue to offer a blended approach to teaching and learning.

Firstly, it is our view that the regulations and guidance should be adapted to support the registration of online schools as these schools are currently operating outside of the registration process. In England, the DfE have trialled a quality assurance process for these schools.

[Quality assuring providers of full-time online education - Ofsted: schools, early years, further education and skills \(blog.gov.uk\)](#)

Secondly, both the guidance and regulations should be strengthened in this area to specifically reference the quality of online teaching (where appropriate) in Standard 1.

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

Requiring all staff in independent schools to register with the EWC will provide an additional step towards safeguarding learners and is welcomed by Estyn. We believe that registration should extend to all teaching staff, those with and without QTS. A registration requirement would ensure standards of professional conduct amongst teachers and persons who support teaching and learning are maintained and improved. This would enable EWC to investigate and hear allegations of unacceptable professional conduct, serious professional incompetence or relevant criminal offences that might call into question a registered practitioner's fitness to practice. In addition, in relation the role of the EWC, we welcomed the proposal to give the EWC an additional power to impose interim



suspension orders to provide an additional safeguard to reassure learners, parents, guardians and the general public about the conduct and practice of a registrant with the EWC.

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

As salaries in the independent sector are broadly in line with or below those in the maintained sector then Estyn feel that it would be appropriate for registrants in the independent sector to pay the same fees as those staff working in the maintained sector.

**Question 14: We would like to know your views on the effects that the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.**

**What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

Overall, is not expected that the proposal will have a positive or negative impact on opportunities for people to use Welsh.

However, for commissioned additional learning provision in independent schools, Welsh Government may wish to consider adding to the guidance for publicly funded placements to consider the provision of Welsh language as part of the contractual arrangements.

**Question 15: Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

It is not expected that the proposal will have a positive or negative impact on opportunities for people to use Welsh.

**Question 16: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

In reviewing the current regulations we wish to raise the following additional points:

1. The possibility of a commitment to review the regulations and guidance on a regular basis, possibly to be in line with Estyn inspection cycles.
2. Overall, the level of expectation / aspiration in the document should be raised, i.e. Using the term 'good' rather than 'appropriate / satisfactory'.
3. More should be added to reflect the Welsh Government commitment to the UNCRC.
4. Consider dividing the regulations into two sections, one looking at whether the proposed school has documents and buildings (not a requirement for online schools) in place (initial registration), the second part of the process looking at the quality of provision and implementation. Schools would have to comply with the regulations at both visits before being fully registered.
5. The guidance document and standards need to be updated with reference to the ALNET Act.
6. Liberty protection safeguards need to be added to this guidance from April 2022 or at the appropriate start date.
7. Particularly in standard 3, consider amending the language from compliance to focusing on the quality of provision.
8. Consider using hyperlinks throughout the guidance and regulations to ensure they link to the latest policies
9. More consistency in phrasing, for example 'promote', 'have regard to'. It is not always clear to schools what this means – consider having a glossary or footnote to define terminology and to provide legal context where appropriate.
10. Greater clarity about the need for online / paper documents e.g. admissions and attendance registers and consider building in flexibility where appropriate
11. Consider re-organising the balance between standards. For example, why does the complaints policy take up one entire standard? In the current climate would it be more appropriate for the safeguarding culture to be addressed under one discrete standard?