

**Explanatory Memorandum to the following Regulations:**

- **The Independent School Standards (Wales) Regulations 2024**
- **The Independent Schools (Provision of Information) (Wales) Regulations 2024**
- **The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024**

This Explanatory Memorandum has been prepared by the Education Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Independent School Standards (Wales) Regulations 2024
- The Independent Schools (Provision of Information) (Wales) Regulations 2024
- The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024

I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and Welsh Language  
15 January 2024

## **PART 1**

### **1. Description**

#### The Independent School Standards (Wales) Regulations 2024

1. The Independent School Standards (Wales) Regulations 2024 (hereafter “the Standards Regulations”) will improve the quality of education and the welfare, health, and safety of pupils in independent schools in Wales, and strengthen governance arrangements in independent schools by:
  - strengthening safeguarding training requirements for staff and school leadership;
  - improving safeguarding by increasing the frequency of DBS checks to every three years;
  - strengthening requirements to ensure that schools actively promote safeguarding of learners;
  - making it clear that the proprietor is ultimately responsible for compliance;
  - adding requirements for schools to actively promote knowledge and understanding of Part 1 of the United Nations Convention on the Rights of the Child
  - requiring that independent schools make specific information such as term dates and inspection reports available to parents and, where appropriate, local authorities.

#### The Independent Schools (Provision of Information) Regulations 2024

- The Independent Schools (Provision of Information) (Wales) Regulations 2024 (hereafter “the Information Regulations”) make changes to the information school proprietors are required to provide to the Welsh Ministers on application to register a new independent school.

#### The Independent Schools (Prohibition on Participation in Management) Regulations 2024

- The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 (hereafter “the Prohibition Regulations”) help ensure that certain individuals may be prohibited from participating in the management of independent schools in Wales.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

2. The Regulations listed in the explanatory memorandum have been laid as a single package to support coherent implementation of reform of the regulatory framework within which independent schools in Wales operate.

## **3. Legislative background**

### The Standards Regulations

3. Section 157(1) of the Education Act 2002 provides for Regulations to be made which prescribe standards about the following matters, (a) the quality of education provided at independent schools; (b) the spiritual, moral, social and cultural development of pupils at independent schools; (c) the welfare, health and safety of pupils at independent schools; (d) the suitability of proprietors of and staff at independent schools; (e) the premises of and accommodation at independent schools; (f) the provision of information by independent schools; (g) the manner in which independent schools handle complaints.
4. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

### The Information Regulations

5. Section 160(1) of the Education Act 2002 provides for the making of Regulations about the manner of application and information required to be given to the registration authority when applying to register a new independent school. Section 168 provides for the making of Regulations that require the proprietor of a registered school to give the registration authority, when the authority so requests, such particulars relating to the school as may be prescribed.
6. The Information Regulations are also made pursuant to section 157(1) of the Education Act 2002 by reason that Regulations 9 and 11 revoke provision pertaining to independent school standards.
7. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

### The Prohibition Regulations

8. Sections 167A and 167B were inserted into the Education Act 2002 by section 169 of the Education and Inspections Act 2006. These sections conferred powers to Welsh Ministers to make Regulations that prescribe the grounds on which a direction may be given prohibiting a person from

taking part in the management on an independent school in Wales or placing a restriction on a person's ability to do so.

9. Section 171 of the Education and Inspections Act 2006 provides for Regulations to prescribe the circumstances in which persons subject to a direction made under section 142 of the Education Act 2002 (the former regulatory regime) may be treated as being subject to a direction made under section 167A.
10. All three Regulations are being made in accordance with the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

11. There are currently just over 80 registered independent schools in Wales. This number is fairly equally split between mainstream schools and those providing for learners with additional learning needs (ALN) or special educational needs (SEN). The age range catered for varies from school to school, with some accepting pupils up to 18 years while others provide for specific age ranges. There is also significant variation in their size; the smallest is registered for a maximum of four pupils and the largest a maximum of 1,500 learners.
12. According to the latest school census, which takes place in January every year, and which all schools in Wales are legally obliged to complete, the total number of pupils in the independent sector in Wales is approximately 10,000 with some 850 qualified teachers and 1,200 support staff such as teaching assistants. Some independent schools offer boarding provision, and these regularly recruit international learners.
13. Many of the schools who provide for ALN/SEN learners are attached to residential provision, and pupils attending these are usually funded by their local authority. Typically, just over half of these pupils are looked after by their local authority, and they move in and out of the provision regularly, often at short notice, because their care requirements change rapidly. These pupils are therefore some of the most vulnerable young people in Wales and it is crucial that the Welsh Government, local authorities, parents and carers, practitioners and other stakeholders provide, and operate within, a framework that ensures that they provide the best possible care and safeguarding for these pupils.
14. Applications to register a new independent school are received from education providers periodically. There is therefore a mix of recently established schools and those who have a rich history that stretches back hundreds of years.
15. All independent schools in Wales that meet the definition in [section 463 of the Education Act 1996](#) are required to register with the Welsh Government and comply with a suite of Regulations. The 1996 Act provides that a school is an independent school if it is not maintained by

the local authority and provides full time education for: five or more pupils of compulsory school age; or at least one pupil with an Individual Development Plan (IDP); or one with an SEN statement; or one with an Education, Health and Care Plan (EHC); or a pupil who is looked after by a local authority. It is immaterial if full-time education is also provided at the school for pupils under or over the compulsory school age.

16. The Welsh Ministers are making changes to two sets of Regulations and introducing a new set of Regulations as a suite. The Regulations have been shaped by balancing the need to ensure that any proposed changes are reasonable and proportionate and that they do not limit unnecessarily the freedom independent schools have to organise themselves and deliver education.
17. 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 Schools (Publication of Inspection Reports) (Wales) Regulations 2003
  - The Independent Schools (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
18. Since the introduction of those Regulations, a number of deficiencies have come to light in the legislative framework which need to be addressed. These include Welsh Ministers historically not having the ability in law to effectively deal with significant issues that have been identified in specific schools.
19. In the Independent School Standards (Wales) 2003, the standard relating to welfare, health and safety of pupils focusses on the importance of a school providing a safe and secure environment for learning and development. Examples of schools failing to comply with this standard include not analysing and mitigating risks to pupils, and not having in place, and implementing, policies that provide for the welfare of pupils when they are in school, and not ensuring pupils have access to welfare resources outside of school hours all of which are requirements to meet the standard in the new Standards Regulations.
20. These deficiencies in the regulatory framework and the way the Standards can be enforced have been acknowledged by Welsh Ministers through responses to the Children's Commissioner for Wales's review of the exercise of functions of the Welsh Government under section 72 of the Care Standards Act 2000, where the need for

fundamental reform to update the regulatory system for independent schools was acknowledged. The same commitment to review the Independent Schools Regulations was made in the Welsh Government's response to recommendations in the Children's Commissioner for Wales's Annual Report 2020-21 and in the response to the Independent Inquiry into Child Sexual Abuse (IICSA).

21. There have been several previous attempts to update the regulatory framework, but these were never finalised, most recently because of the COVID-19 pandemic. Hence there is now an urgent need to update the Regulations. More detail on the purpose and intended effect of each of these Regulations is provided below:

### **The Standards Regulations**

22. The Standards Regulations revoke and replace the Independent School Standards (Wales) Regulations 2003. These Regulations use the powers in sections 157(1) and 210(7) of the Education Act 2002 to update and introduce new requirements, which prescribe the standards with which independent schools must comply. It is the responsibility of the proprietor of an independent school to ensure that the standards are met.
23. The key themes of these changes are to update regulatory requirements in order to strengthen school governance arrangements and improve the quality of education provided as well as the safeguarding, welfare, health and safety of pupils in independent schools.
24. The Standards Regulations, like the 2003 Regulations, set out the standards and the requirements in seven parts;
- i) Quality of education provided at the school
  - ii) Spiritual, moral, social, and cultural development of pupils
  - iii) Welfare, health, and safety of pupils
  - iv) The suitability of proprietors, staff and supply staff
  - v) Premises of, and boarding accommodation at, schools
  - vi) The provision of information
  - vii) The manner in which complaints are handled.

### **Clarifying who is responsible for complying with the Standards**

25. The Standards Regulations change many of the requirements from 'the school must' to 'the proprietor must', the purpose of which is to clearly place responsibility for compliance with the standards on a particular entity, i.e., the proprietor of the school. The responses to the Call for Evidence supported this proposed approach. They were also of the view that making these changes through Regulations would ensure levels of compliance that would not be seen through guidance. The new

Regulations therefore provide that the accountable entity is the proprietor.

26. Although there was a fairly mixed response to this proposal in the consultation as independent schools have differing governance arrangements and some did not recognise the term “proprietor” in their own circumstances, there was broad support for the idea that a single legal person is accountable for ensuring compliance, rather than the school. The Standards Regulations therefore continue to use the term “proprietor”, and state that they will be responsible for compliance, even if their day-to-day responsibilities might be devolved to others in accordance with local management arrangements.

### Online learning

27. Following the experience of moving teaching online during the COVID-19 pandemic, the Welsh Government is aware that some independent schools are continuing to offer a blended approach to teaching and learning. In response to this significant change to delivery mechanisms, in anticipation of this becoming a more common trend within independent schools, and to future-proof the legislation, the Standards Regulations make it clear that schools are expected to meet the requirements of the various Standards irrespective of how the education and learning is delivered.
28. To aid the above approach and reflecting that teaching may not always be delivered in a classroom setting, any references to ‘class time’, ‘classroom’ and ‘class’ have been removed from these Regulations in all Standards, except those in Standard 5 which relate to the premises and boarding accommodation.

### Impact of the Additional Learning Needs and Education Tribunal Act

29. The definition of an independent school was amended by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET) which came into force in September 2021 except in relation to certain persons (essentially, those for whom the ALNET is not commenced from that date).
30. Where appropriate, the Standards Regulations therefore refer to the phasing in of the requirements of the ALNET Act by amending the wording in the relevant requirements to include pupils who have Individual Development Plans (IDPs) or Statements.

### Standard 1 - Quality of education provided at school

31. The Standards Regulations amend the wording in requirements from ‘school’ to ‘proprietor’; including references to the Equalities Act 2010; and introduce 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. There is also a new requirement that proprietors should have due regard to Part 1 of the United Nations Convention on the Rights of the Child.

32. In addition, the Standards Regulations raise the level of expectation of the quality of the education provision by changing the quality and standard of teaching, from 'adequate', 'satisfactory' and 'appropriate' to a level where the provision is 'good' or 'effective', i.e., we are changing the requirement of the standard so better provision is required to achieve compliance.
33. It is not the intention to undermine an independent school's ability to develop and deliver its own curriculum. However, the Standards Regulations make it clear that the curriculum they develop must demonstrate that it meets the needs of all individual learners at the school. For a learner with additional learning needs (ALN), the additional learning provision (ALP) they require will be described in their IDP. A school's curriculum should provide differentiated learning for all learners of compulsory school age which provides experience in the following areas: language, communication, mathematics, science, technology, humanities, health, well-being and expressive arts.

#### Standard 2 – spiritual, moral, social and cultural development of pupils

34. The Standards Regulations amend the wording in requirements from 'school' to 'proprietor' to make it clear who is ultimately responsible for compliance; introduce new requirements to encourage pupils to respect the values of democracy and support the democratic process, 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; and where practical, within the school, offer pupils a balanced presentations of opposing political views. The Regulations also introduce a requirement for the proprietor to actively promote knowledge and understanding of Part 1 of the United Nations Convention on the Rights of the Child.

#### Standard 3 - welfare, health and safety of pupils

35. There is now a requirement for the proprietor to ensure that all staff, supply staff and everyone who has leadership and management responsibilities in the school actively promotes the well-being of the learners, improving their health and safety and welfare as well as the school's governance. Introducing this new requirement will help address a gap in the 2003 Regulations and ensure that those with leadership and management responsibilities take a more active role in promoting the well-being of pupils.



36. The underpinning aim of all regulatory amendments in this standard is to strengthen the safeguarding and well-being of learners by ensuring that all staff, supply staff and volunteers at independent schools complete appropriate training in the independent school's safeguarding policy and that there should be a written record of that training. The standard requires that the school has a fully implemented written policy to safeguard and promote the welfare of pupils. Such policies and arrangements must have regard to any guidance issued by the Welsh Ministers in relation to safeguarding.
37. The revised Operational Guidance being launched alongside these regulatory changes will explain that the requirement to actively promote the well-being of learners covers members of the governing and proprietorial bodies as well as employees in management positions. This requirement also relates to anyone with leadership or management responsibilities at a school regardless of their job title or position. Its introduction will allow Welsh Ministers to act if there appear to be failings in the school's management, leadership or governance which result in learners being put at risk of harm.
38. It will now be possible to require the proprietor to identify in an action plan what steps they will take to address concerns that the school's leadership is failing in its duty to promote the welfare health and safety and well-being of learners.
39. The Standards Regulations place a requirement on the proprietor to maintain records to evidence that the school's policies, as required by Standard 3, are reviewed regularly and updated as appropriate. Policies that are regularly reviewed and adjusted in the light of experience and good practice form the basis for effective safeguarding within the school.

#### Standard 4 – Suitability of proprietors, staff and supply staff

40. Currently, once the initial enhanced DBS checks have been carried out on proprietors and staff, there is no statutory requirement for them to be repeated while they remain in post. The Disclosure and Barring Service certificate does not have an expiry date. 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. There was also broad support for increasing the frequency of DBS checks in the responses to the consultation and, consequently, the Regulations introduce a requirement that DBS checks are renewed every three years.
41. Introducing regular DBS checks will put a focus on safeguarding and the importance of having regular measures in place that continually bolster the protection of learners. This is of particular importance in boarding schools, where risks are heightened as boarders often live far away from their families, are under the authority of adults in the school, and are dependent upon them for their welfare.

42. The proprietor is required to provide written confirmation that all relevant individuals have the appropriate DBS checks and having considered the information from the checks the proprietor is required to consider whether the individual is suitable for the position to which they would be appointed.
43. In relation to proprietors or chairs of independent schools, the Welsh Ministers will consider the information contained in their DBS check certificate and will confirm that they consider that the individual is suitable to be the proprietor or chair of the independent school.

#### Standard 5 – premises of, and boarding accommodation at school.

44. The Standards Regulations amend the wording of the 2003 Regulations to make it clear that the proprietor is ultimately responsible for compliance with this Standard.
45. The reference to ‘special needs’ is undefined in the 2003 Regulations. Therefore, the wording in the 2024 Regulations has been changed to “special requirements” and puts the focus on the need for buildings and all facilities within the school to be accessible and structurally sound, ensuring that they can be used on a basis of equality by all learners. Learners with special requirements should also have access to learning and extra-curricular activities on an equal basis with all other learners.

#### Standard 6 – The provision of information

46. The Standards Regulations alter the type of contact details school proprietors must provide to parents. They introduce a requirement to make certain information available to parents and require that inspection reports must be published on the school’s website and made available to parents of pupils or parents of prospective pupils and to local authorities if they are responsible for looking after a pupil at the school, funding a pupil at the school or maintaining the IDP or statement for a pupil at the school. This will improve transparency for pupils and parents about the quality of education provided by independent schools. The Standards Regulations also introduce a duty to provide information on request to the Chief Inspector, the Welsh Ministers, or a body approved under section 163(1)(b) of the Education Act 2002.
47. The Standards Regulations make it a requirement that schools make available the term dates for the current and next academic years, and the dates of any planned closures during term time on their website.
48. There is now also a requirement for the independent school to publish and maintain on the school website (if the school has a website) a copy of an inspection report produced following an inspection made under section 163(1) of the 2002 Act (if it has been sent to the proprietor or the school) no more than 14 days after the school has received the report

from the body that carried out the inspection. There is also now a requirement for a copy of that inspection report to be provided to:

- the parents of every registered pupil;
- where a registered pupil is looked after by a local authority, the local authority that is responsible for looking after them;
- where a registered pupil's placement is funded wholly or partly by a local authority, the local authority that provides the funding; and
- where a registered pupil has an individual development plan or statement, the local authority with responsibility for maintaining the individual development plan or statement.

### Standard 7 – the manner in which complaints are handled

49. The Standards Regulations include a requirement on the proprietor of a school to publish its complaints handling procedure on the school website or, where that is not possible, to provide pupils, boarders and their parents a copy of the procedure and to make it available to parents of prospective pupils or boarders.
50. The school complaints procedure must set out clear timescales for the management of a complaint and must also provide an opportunity for a complaint to be made and considered initially on an informal basis. If parents, pupils or boarders are not satisfied with the response made in accordance with the informal procedure, or wish to pursue a formal complaint, The school has to ensure there is a procedure for the complaint to be made in writing.
51. In addition, a record must be kept of any 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.

### The Information Regulations

52. The Information Regulations revoke and replace the Independent Schools (Provision of Information) (Wales) Regulations 2003. They relate to applications for registration of independent schools under section 160(1) of the Education Act 2002 and information to be provided periodically by the proprietors of independent schools under section 168 of that Act.
53. The Information Regulations specify the information that a proprietor needs to supply to the Welsh Government in advance of registration of an independent school. This is in the form of an electronic application hosted on the Welsh Government website.

54. Regulation 4 of the Information Regulations makes provision for the submission by the proprietor of an independent school of an initial return within 90 days of the admission date or, if later, a request by the registration authority. Part 3 of the Schedule prescribes the information to be included in the initial return.
55. Regulation 5 makes provision for the submission by the proprietor of an independent school of annual returns to the registration authority (i.e., the Welsh Ministers). Part 4 of the Schedule prescribes the information to be included in the annual return.
56. Regulation 6 provides that if it is satisfied that a proprietor of an independent school has failed to comply with any requirement of regulation 4 or 5, the registration authority may remove the school from the register. Regulation 7 provides that it is an offence for a proprietor of an independent school to fail to comply with any requirement of regulation 4 or 5.
57. Regulation 8 revokes the Independent Schools (Provision of Information) (Wales) Regulations 2003. Regulations 9, 10 and 11 revoke other instruments and provisions that amend either the 2003 Regulations or the Independent School Standards (Wales) Regulations 2003.
58. Regulation 12 makes transitional provision for the 2003 Regulations in cases where an initial return or annual return is required to be returned before the coming into force of these Regulations.

### **The Prohibition Regulations**

59. The Prohibition Regulations are new Regulations intended to help keep children learning in independent schools safe by ensuring that certain people, as outlined below, are not involved in the management of an independent school. They prescribe the grounds on which a direction may be given under [section 167A](#) of the Education Act 2002 (“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.
60. The Prohibition Regulations stipulate that Section 167A directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or 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.
61. The Prohibition Regulations also make provision about the procedure for giving a section 167A direction, the circumstances in which a section 167A direction may be varied or revoked and provision about appeals in respect of section 167A directions.

62. Guidance will be published for independent schools alongside the Regulations coming into force in early 2024.

### **Who will be affected by the legislation?**

63. The regulatory changes affect the proprietors of independent schools, their staff, their learners and their parents. They will also impact on Estyn and Care Inspectorate Wales when they undertake their inspections and assess compliance with the Standards.

64. For proprietors, the regulatory changes reflect that the proprietor is the accountable entity. They raise the level of expectation of the quality of the education provision by changing the quality and standard of teaching, from 'adequate', 'satisfactory' and 'appropriate' to a level where the provision is 'good' or 'effective', so better provision is required in order to achieve compliance. There will be a requirement for the proprietor to ensure that everyone who has leadership and management responsibilities in the school actively promotes the well-being of their pupils, increasing the levels of health and safety, welfare and governance.

65. The Standards Regulations introduce a requirement for proprietors to maintain a record of safeguarding training provided to staff.

66. In relation to teachers, the Standards Regulations set a new requirement under Standard 3 (welfare, health, and safety of pupils) and create an environment within every school where everyone has the appropriate level of training so that they understand the education setting's safeguarding policy; understand their responsibilities and know how to respond effectively when they have a concern or hear a disclosure.

67. For learners, there are additional safeguards in that the Standards Regulations introduce a requirement that DBS checks are renewed every three years. The Welsh Government believes that introducing regular DBS checks will put a focus on safeguarding and the importance of having regular measures in place that continually bolster the protection of learners, particularly in boarding schools where risks are heightened as boarders are often living far away from their families and are under the authority of adults in the school and are dependent upon them for their welfare.

68. The Standards Regulations place a focus on the need for buildings and all facilities within the school to be accessible ensuring that they can be used on a basis of equity by all learners. Pupils with special requirements should also have access to learning and extra-curricular activities on an equal basis with all other learners.

69. The Standards Regulations strengthen the governance of the school and improve the level of information available to pupils and parents by amending the wording to make it clear that the proprietor is ultimately responsible for compliance with the standards; requiring the proprietor to publish the schools complaints handling procedure on the school website or where that is not possible to provide pupils, boarders and their parents a copy of the procedure and to make it available to prospective pupils, boarders and parents of prospective pupils or boarders; and that schools must record any action taken by the school as a result of those complaints and whether they were upheld.
70. The suite of Independent School Regulations align with the introduction of the Education Workforce Council (Additional Categories of Registration) (Wales) Order 2023, which give the Education Workforce Council (EWC) the power to regulate additional groups of professionals, including teachers in independent schools, and include them in the education workforce register. Taken together, this should provide the public with a high level of confidence that children and young people learning in independent schools do so in a safe environment.

## **Public engagement**

71. An initial Call for Evidence ran between 9 December 2021 and 4 February 2022 and a formal consultation on the draft Regulations ran between 22 May and 17 July 2023.

### Call for Evidence

72. In October 2021, the Welsh Government made a presentation at the Welsh Independent School Council (WISC) conference to draw attention to our plans to review the Regulations. This was followed by the publication of a [Call for Evidence](#) on 9 December 2021, supported by a series of virtual engagement sessions held with independent schools, local authorities and other stakeholders such as the Children's Commissioner, National Independent Safeguarding Board (NISB), Estyn and Care Inspectorate Wales (CIW).
73. The Call for Evidence closed on 4 February 2022. Eleven responses were received, and a summary of those responses was published on 30 March 2022. The headline findings from the [Call for Evidence](#) showed that there was general agreement that the Regulations required updating and that issues around the governance and management of schools and ensuring the safety and well-being of learners were the key areas of concern. They supported the proposals to:
- strengthen safeguarding training requirements for staff, school leadership, and learners;

- consider who should be DBS checked and increase the frequency of DBS checks to every three years;
- strengthen the Regulations to ensure that schools actively promote safeguarding of learners;
- amend the wording in the Standards to make it clear that the proprietor is ultimately responsible for compliance;
- explore the development of a framework of interventions and enforcement actions between when an action plan does not resolve the failure to comply with the Standards and the removal of a school from the register;
- align the Independent Schools Regulations with the requirement for staff to register with the Education Workforce Council; and
- make a new set of Regulations, the Independent Schools (Prohibition on Participation in Management) (Wales) Regulations.

74. In September 2022, the Welsh Government made another presentation about the proposed legislative changes at the Welsh Independent School Council (WISC) conference.

75. Estyn was commissioned by the Welsh Government to hold a series of stakeholder engagement events in January 2023, aimed at increasing awareness of the proposed changes, and encouraging attendees to make their views known in the public consultation. During these events, stakeholders were provided with detail about the proposed legislative changes and given an opportunity to comment on them.

## **5. Consultation**

### Formal Consultation

76. In addition to the stakeholder engagement sessions held in January 2023 and the previous Call for Evidence, an eight-week consultation ran from 22 May to 17 July 2023 and was drawn to the attention of a wide audience of key stakeholders including independent schools, local authorities, the Children's Commissioner for Wales, Estyn and the teaching unions.

77. The consultation attracted a total of 19 completed responses, 10 online and 9 emailed, from a variety of sources, including individual schools, a parent and larger bodies. In addition, there were a further 20 partial responses.

78. Two completed responses were submitted anonymously. Where respondees have asked that their details be kept confidential, that request has been honoured. Responses from bodies that were content to be made public were provided by the following:

- Children’s Commissioner for Wales
- Welsh Independent Schools Council
- Education Workforce Council
- National Secular Society
- Catholic Education Service
- Estyn
- National Education Union Cymru

79. The majority of the responses supported the proposed changes to the regulatory framework. Some limited changes have been made to the draft Regulations as a consequence of the responses, for example, the incorporation into the Independent School Standards (Wales) 2024 of a need for proprietors to have regard to Part 1 of the United Nations Convention on the Rights of the Child. Other suggestions are being covered by revisions to the operational guidance which will accompany these Regulations. A summary of the consultation responses has been produced and will be published in due course.

**The risks if this subordinate legislation is not made**

80. If the suite of Regulations and supporting guidance are not made, the concerns around the robustness of safeguarding measures and governance and the quality of the management in independent schools in Wales will continue.

81. Failure to strengthen the quality of education standards in the Standards Regulations will put learners at risk of poor outcomes; failing to address the gaps in safeguarding measures and strengthening school governance may compromise the welfare, health and safety of children and young people learning in independent schools in Wales. The legislative changes will seek to collectively raise standards and help address the legislative gap which exists for Welsh Ministers currently not having sufficient powers of intervention.



## PART 2 – REGULATORY IMPACT ASSESSMENT

82. It is now almost twenty years since the majority of Regulations governing independent schools were made. Over that period, a number of deficiencies have come to the attention of the Welsh Government. Core inspections by Estyn have identified frequent failures by schools to comply with the standards in the Independent School Standards (Wales) Regulations 2003 relating to the quality of education provided, and the welfare, health, and safety of pupils.
83. The Standard relating to welfare, health and safety of pupils focuses on the importance of a school providing a safe and secure environment for learning and development. Examples of schools failing to comply with this standard include not analysing and mitigating risk to pupils, and not having in place, and implementing policies that provide for the welfare of pupils when they are in school, and not ensuring pupils have access to welfare resources outside of school hours. Of particular concern has been the gaps in the current safeguarding arrangements and the links to weaknesses in the school's governance.
84. These deficiencies in the regulatory framework have been acknowledged through responses to the Children's Commissioner for Wales's [review](#) of the exercise of functions of the Welsh Government under section 72 Care Standards Act 2000, in which the Welsh Government acknowledged the need for the fundamental reform to update the regulatory system for independent schools.
85. The same commitment to review the Independent Schools Regulations was made in the [Welsh Government's response](#) to recommendations in the Children's Commissioner for Wales's Annual Report 2021.
86. The Independent Inquiry into Child Sexual Abuse (IICSA) looked at child sexual abuse in residential schools in both the maintained and independent sector. The evidence given by Welsh Government officials in November 2020 acknowledged that there are weaknesses in the current regulatory framework. The inquiry published its [report](#) on 1 March 2022 and, where applicable, the recommendations have been considered in the development of these Regulations.
87. In line with the policy intent, the feedback received, and the evidence gathered as part of the Call for Evidence, the Welsh Government undertook a review of the current legislative framework.
88. While some of the Regulations have been amended since they were made, some have become outdated and do not necessarily reflect current best practice, guidance, and policies. Amendments to address these gaps are being made, for example, references to specific documents by name are removed from the Regulations and are replaced with references to the policy intent of the guidance to futureproof the Regulations and keep the wording current. Some of the wording in the

Regulations has also been changed to reflect the current Welsh Government position in relation to gender language.

## **6. Options**

### ***Option 1: Do nothing***

89. If the regulatory framework remains unchanged, the view of the Welsh Government is that there remains the potential for learners' safety to be compromised. Safeguarding children and young people in all settings must be a priority and amending the Regulations is one step towards this. Furthermore, the Welsh Ministers would risk reputational damage if they were not to act upon the recommendations to improve safeguarding made by the Children's Commissioner for Wales, and IICSA.

### ***Option 2: Make some legislative changes***

90. Making some legislative changes is an option, but the impact would depend on precisely which changes were made. We could, for example, simply concentrate on getting proprietors to maintain a record of training provided for staff, governing body and volunteers, or we could focus on getting schools to publish their term dates for the current academic year on their website. However, the biggest priority here must be safeguarding learners; and that is what we have interpreted as 'making some legislative changes', via regular DBS checks and safeguarding training for staff.

### ***Option 3: Make the legislation in full***

91. By amending the Regulations in full, the Welsh Government will not only strengthen the 2003 legislation, but also be able to address the recommendations of the Children's Commissioner for Wales and IICSA, ensuring that children and young people in the independent schools setting are appropriately safeguarded and that high standards of learning and governance exist in that setting.

## **7. Costs and benefits**

### ***Option 1: Do nothing***

#### **Costs**

92. This is the baseline option and, as such, there are no additional costs associated with this option. The financial and reputational costs of carrying the risks of ignoring the known deficiencies in the existing regulatory regime and the recommendations from the Children's Commissioner for Wales and IICSA are too high to ignore. This is

especially the case in the event a child or young person were to be harmed when the legislation that is supposed to keep them safe is known to be inadequate. This option would therefore not meet the policy intent.

### *Benefits*

93. There are no additional benefits from this option.

### ***Option 2: Make some legislative changes***

#### *Costs*

94. The costs of making some legislative changes are broadly similar to those for making the full range of legislative changes in terms of Welsh Government officials' time and also of costs to the sector for things like familiarisation and implementation. These costs, which are set out in Option 3, would affect different schools in different ways, depending upon how close to complying with requirements of the revised Standards they already are.

#### *Benefits*

95. The benefits of introducing some legislative changes are similar to those set out for Option 3, although on a lesser scale. Making some limited changes to the existing regulatory regime by, for example, requiring more frequent DBS checks could result in improvements to increased safeguarding of learners, although this would not address all of the deficiencies highlighted by the Children's Commissioner for Wales or the IICSA report.

### ***Option 3: Make the legislative changes in full***

#### *Costs:*

96. There are several different costs associated with this option.

97. Firstly, there are costs attributable to the Welsh Government in relation to the development of the Regulations and associated guidance, in particular the cost incurred by policy and legal officials of developing it and the cost of the website hosting the guidance. The registration and operational guidance supporting the Regulations has been developed under a contract with Estyn totalling £30,000. This contract covers the development of the guidance, hosting of several stakeholder awareness events and production of the consultation document on the draft regulatory changes to the Independent Schools Regulations. In terms of the costs for the time of officials in developing these Regulations and the documents supporting them, these are met from within existing budgets.

98. The costs of officials' time in translating the draft Regulations, consultation document and the associated guidance are met from within existing Welsh Government budgets, specifically from that of Legislative Translation Unit and consequently falls within the usual run of business activity.
99. The effects of the draft Regulations will not result in any additional funding from the Welsh Government, but there will be costs to independent schools themselves. These will include the cost of proprietors, headteachers and teachers needing to familiarise themselves with the guidance. However, whilst head teachers and proprietors will need to familiarise themselves with the requirements of the new Regulations, governors are generally not salaried. In terms of teachers and head teachers, their salaries are a fixed cost.
100. It is not possible to accurately identify detailed costs for such familiarisation as each independent school enters into a contractual relationship with its staff and consequently staff costs will vary from school to school. Likewise, as independent schools vary tremendously in size, it is not possible to identify accurately an average number of staff per school. However, officials consider that familiarisation with the requirements of the new Regulations would amount to no more than half an hour of the time of a typical proprietor, head teacher or teacher and should be considered part of their business-as-usual activity.
101. As for premises costs, there may be a need for some independent schools to equip or adapt their premises so that they meet the requirement for accessibility to all pupils as set out in the Standards Regulations. This will vary from school to school depending upon their existing arrangements; for schools that are already accessible the costs will be low, whilst for those where reasonable adjustments are required, the costs will be higher. The Welsh Government does not provide capital funding to independent schools, which are private businesses and are not eligible to apply for capital funding through the Sustainable Communities for Learning Programme.
102. Recurrent costs will include training – with all staff, for example, needing safeguarding training and complying with all other statutory and mandatory requirements to protect the welfare, health and safety of pupils; staff in leadership and management positions actively promoting the well-being of learners; and proprietors maintaining a record of safeguarding training provided to staff. However, there is already an expectation under the 2003 Standards that independent schools will have suitable processes in place to ensure children are safe and so these costs are expected to be minimal. In addition, this is already considered good practice by many schools who are already working to this standard. As an example of typical costs, one medium-sized independent school already has arrangements in place to train three

safeguarding leads and two pastoral leads at a cost of £370 per person, for a total cost of £1850.

103. The Regulations will generate limited additional administrative burdens on independent schools - for example, the Standards Regulations will make it a requirement that schools publish the term dates for the current academic year on their website and require schools to publish their complaints handling procedure on their website and also keep records of safeguarding training undertaken by staff. It is anticipated that this additional work will be minimal, amounting to a few minutes of an administrator's time, especially given that most independent schools already have such arrangements in place.
104. One obvious area where there will be additional costs to independent schools is in terms of extending those who should be subject to DBS checks and increasing the frequency of conducting DBS checks. The Standards Regulations will introduce a requirement that DBS checks are renewed every three years, which incurs a cost for the school.
105. It is not possible to be precise about the additional costs right across the sector, because extending and increasing the DBS checks is already effective practice in many independent schools. For example, some schools may already renew checks on staff every three years. For these schools, there will be little or no additional cost from these revised Regulations. In other schools that do not presently have these arrangements in place however, the costs will be correspondingly higher. However, we can extrapolate figures; for a comparatively large school with approximately 120 staff, the costs for using the DBS update service every three years would amount to £4680.00 at current rates, whilst for a small school with 5 staff, that cost would amount to £195.00. For the larger school, the total cost is significantly less than half the annual day fee for a pupil and so would not be a disproportionate cost.
106. Whilst the Standards Regulations introduce a new requirement to renew DBS checks every three years, the Welsh Government will not prescribe how this is done. As such, it will be incumbent on each school to decide whether the checks will be through the DBS update service (currently amounting to £13 per person, per annum = £39 equivalent over 3 years) or through a new check every three years (currently amounting to £44 per person, equating to a £14.66 per annum equivalent).
107. It is therefore very difficult to calculate the actual costs as there are so many variables in individual schools across the sector. For example, the cost will vary depending on the number of staff employed, as some larger schools may have large numbers of staff requiring these checks whilst other smaller schools will have far fewer staff requiring

checks. Cost implications for these additional checks may also need to be considered alongside off-set fee income-related factors such as those settings e.g., charging higher fees, with charitable status, operating as not for profit, etc.

108. There will be limited monitoring and enforcement costs on Estyn, associated with ensuring that independent schools comply with the new requirements. However, as it is already required to check against compliance with the existing regulatory regime, Estyn has confirmed any additional costs will be minimal.
109. The responses to the consultation only provided very limited detail as to the cost impacts of the proposed approach for a typical school. Officials have also discussed this issue with the Heads of Independent Schools Task and Finish Group, (consisting of head teachers in independent schools across Wales) and confirmed that the impact would vary from school to school, but that much of what was being proposed was already considered good practice in many schools and hence was already being done.
110. While there will be costs to independent schools as a consequence of the legislative changes in the suite of Regulations, it is for the schools themselves to ensure that they are operating their businesses in a way that is compatible with the requirements of the Regulations. It is also of paramount importance to note that the improvements to school governance and the improved safeguarding arrangements for children and young people in independent schools are of far greater importance than the costs.

*Benefits:*

111. The benefits of introducing the Regulations in full are as stated previously.
112. Amending the Regulations is a vital element in ensuring that public trust and confidence in the independent school sector in Wales is maintained; as well as safeguarding the interests of children and young people learning in the independent setting. There are currently 82 independent schools registered to operate in Wales. This number is fairly equally split between mainstream schools and those providing for learners with additional learning needs (ALN) or special educational needs (SEN). The age range catered for varies from school to school, with some accepting pupils up to 18 years while others provide for specific age ranges. There is also significant variation in their size; the smallest is registered for a maximum of four pupils and the largest a maximum of 1,500 learners. The total number of pupils in the independent sector in Wales is approximately 10,000 with some 850 qualified teachers and 1,200 support staff such as teaching assistants. Compliance with the revised regulatory requirements will provide

assurance for pupils and parents that the independent school setting is safe. In addition, the Regulations will help to maintain confidence amongst the workforce itself in upholding professional standards. That in turn contributes to the improvement of the standards of teaching and quality of learning in Wales.

## **Summary of findings of the Integrated Impact Assessment process**

### **Welsh language**

113. The proposed legislative changes to the suite of Independent Schools Regulations are not anticipated to have any impacts, either negative or positive, on the Welsh language. A Welsh language Impact Assessment has been produced.

### **Children's Rights**

114. The legislative changes will result in enhanced safeguarding arrangements in independent schools in Wales and thus will help ensure children and young people are kept safe. A requirement has been added into the Standards Regulations that proprietors of independent schools must pay regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child. No negative implications have been identified. A Children's Rights Impact Assessment has been produced.

### **Equality and Human Rights**

115. Children and young people are the group who will benefit the most from the additional safeguards put in place by these legislative changes, which will ensure that strict and monitored registration and compliance measures are enforced through legislation and inspection. These regulatory changes will help ensure that young women and girls and members of the LGBTI community, who are among those most likely to encounter safety concerns, who are learning in the independent school setting, will be better protected by means of more effective safeguarding. No negative impacts on any section of society with protected characteristics has been identified. In addition, the legislative changes will have a positive impact on disabled children as they introduce a requirement for school premises to be fully accessible to all pupils. An Equality Impact Assessment has been completed.

### **Privacy**

116. Independent schools already routinely provide the Welsh Government with information about their operation as part of the annual school census, however the suite of Independent Schools Regulations will impose new requirements to provide information. The Standards

Regulations require a full set of checks - ID, right to work in the UK, DBS and additional safeguarding checks for those that have lived outside the UK for staff and the proprietor (specifically broken down to include proprietors who are individuals and the chair and board members of the body corporate that is the proprietor of an independent school). The Information Regulations require new information to be submitted upon application in respect of the proprietor (individuals and members of corporate bodies) including previous names, NI number, email address, employment history, business interests, references. These will be predominantly requested through the initial return, registration application and annual census return.

117. The request for additional data from schools within the independent school sector in Wales will ensure that all children that attend independent school settings in Wales remain safe and well while on their educational journey, and that such schools have appropriate governance arrangements in place. We would expect schools to already hold this information as a form of good practice during their recruitment processes which further enforces that staff employed by the schools have been properly vetted before commencing employment. While we will not process this data in any other way, it delivers us assurances during the initial application process, and further reassurances while receiving the initial return and annual census returns.

118. Welsh Government have complied with the requirement to consult with the Information Commissioner under Article 36(4) of the UK GDPR, and the Commissioner's office has confirmed they are content with the proposals. A Data Protection Impact Assessment is not required. All information provided will be kept and managed in accordance with the requirements of the GDPR.

## **Justice Impact Assessment**

119. The legislative changes to the Independent Schools Regulations amount to the revocation and replacement of two sets of Regulations and the making of one further set. No new primary legislation is being brought forward, nor are any offences being created, removed, or amended. There is scope for new appeals to the First-tier Tribunal on making of the Prohibition Regulations as section 167B appeals will be engaged. The suite of Regulations will not result in any other impact on the justice system. The number of directions made, and consequent appeals is expected to be extremely low. Consequently, no Justice Impact Assessment is considered necessary.



## **8. Competition Assessment**

120. There are no market implications associated with the making of these proposed legislative changes. Whilst there will be a limited financial impact on independent schools, there is no impact from a competition perspective.

## **9. Post implementation review**

121. The Welsh Government will work with Estyn to monitor, review, and evaluate the Regulations following the coming into force date of these regulatory changes. This approach will aim to measure the effectiveness of the revised Regulations and capture their real impact, and, in particular, whether the policy aims are being met.

122. As the registration authority, the Welsh Government may, at any time, require Estyn to inspect any registered school relating to any, or all, of the Independent School Standards. Estyn will be required to report to the Welsh Government on the extent to which the school meets the Independent School Standards and to arrange for publication of the inspection report.

123. The purpose of the review will be to assess whether the Regulations are being adhered to and whether they are being appropriately implemented. The review will be on-going because at each termly meeting between the Welsh Government, Estyn and Care Inspectorate Wales, the inspectorate will provide a programme of forthcoming inspections of independent schools planned for the following term. For Care Inspectorate Wales, this includes both boarding and residential special schools, and where possible care homes for children linked to independent special schools provision.

124. Both Estyn and Care Inspectorate Wales will also provide advice every term on the publication schedule for section 163 inspection reports and notes of annual monitoring visits. This will enable Welsh Ministers to consider any contentious issues and to begin any follow-up action required.

## **Summary**

125. Welsh Ministers have agreed to Option 3 – to make the legislative changes in full. Taking this approach will ensure that children and young people in the independent school sector in Wales will receive the greatest benefits in terms of enhanced safeguarding and well-being and quality of education and will allow Welsh Ministers to demonstrate compliance with recommendations from the Independent Inquiry into Child Sexual Abuse and the Children’s Commissioner for Wales.