

Number: WG17923



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation – summary of responses

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

Date of issue: June 2013

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

Audience	This document is aimed at all those with an interest in the provision of education for those with special educational needs.
Overview	This is a summary of the responses to a consultation exercise issued by the Welsh Government on the reform of the registration and approval of independent schools in Wales wishing to provide education for learners with special educational needs.
Action required	None – for information only.
Further information	Enquiries about this document should be directed to: Additional Learning Needs Branch Support for Learners Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: AdditionalLearningNeedsBranch@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations

Contents

Background	1
The consultation	3
Next steps	6
Annex: List of respondents	7

Background

Section 347 of the Education Act 1996

Section 347 of the Education Act 1996 (s347 of 'the Act') concerns the placement of children with special educational needs (SEN) statements in independent schools in Wales. It provides for the Welsh Ministers to approve an independent school as suitable for the admission of children for whom statements are maintained by the local authority under s324 of the Act. Under s347(5), for a child to be placed in an independent school, Welsh Ministers must either have approved the school as suitable for the admission of children with SEN statements generally (s347(5)(a)) or must have approved the placement of a specific child in a particular school (s347(5)(b)). The criteria which the Welsh Ministers take into account when considering an application for approval are set out in the Education (Special Educational Needs)(Approval of independent schools) Regulations 1994 (SI 1994/6510).

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

The Welsh Ministers are the registrar of independent schools in Wales. Any establishment wishing to operate as an independent school must apply to the Welsh Ministers under section 160 of the Education Act 2002. It is an offence for any person to conduct an independent school which is not registered. Applications must include prescribed information, including whether the proposed school intends to admit pupils with SEN (with or without a statement). Section 160 (s160) provides that when an application is made to be included on the register of independent schools, certain information must be provided including:

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

S162 allows the Welsh Ministers to remove a school from the register if there is a material change in relation to the school and the change has not been approved by the Welsh Ministers. A material change includes a change in respect of any of the matters listed above. Independent schools which are not registered to admit pupils with SEN may apply to do so to the Welsh Ministers

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

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

by way of requesting a material change (s162 of the Education Act). Independent schools can currently also seek approval to admit children with SEN statements generally under s347 (5) (a). In the case where an independent school does not have approval to admit children with SEN statements generally, parents who choose to meet the financial commitment to place their child with SEN into that independent schools are not bound by the same legal requirements as local authorities in having to apply for approval to make such a placement.

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

Background to consultation

The Welsh Government undertook a consultation on the policy proposal to reform the registration and approval of independent schools in respect of special educational needs by repealing Section 347 of the Education Act 1996. The consultation period ran from 20 September to 1 November 2012.

The consultation

The consultation process

The consultation document published by the Welsh Government asked for feedback on the policy proposal to reform the registration and approval of independent schools in respect of special educational needs, and the accompanying draft summary annual monitoring report.

Respondents were invited to consider specific questions about the policy and encouraged to make any other points they considered necessary.

The consultation period ran for six weeks and was promoted via direct mailings to education contacts within the state sector, third sector, independent sector and the inspectorate. The consultation documents were also published on the Welsh Government's website which can be accessed here:

<http://wales.gov.uk/consultations/education/senregistration/?lang=en>

The consultation document referred to proposals to reform the legislation relating to children with SEN. The Minister for Education and Skills made a statement on 26 September 2012 to announce that those proposals will now be going ahead on a different timetable to the proposed repeal of s347. Therefore, any references to the Individual Development Plan or 'significant/severe additional needs (AN)' in the consultation document should be read as referring to pupils with a statement of SEN.

Responses received

We received 9 responses from Estyn, Howells School Llandaff, the Association of Teachers and Lecturers (ATL) Cymru, NASUWT, NUT Cymru, Conwy County Borough Council, the Children's Commissioner for Wales, Rydal Penrhos School and St David's College.

The majority of respondents agreed with the proposals.

Question 1 – Do you agree that s347 should be repealed?

Five of the respondents agreed that s347 should be repealed, one disagreed with the proposal and the remainder neither agreed nor disagreed.

The reasons given for supporting the repeal of s347 were that the current arrangements were cumbersome and unworkable. ATL Cymru sought assurances on the level of finance available to local authorities and stated that the Welsh Government is best placed to have an overview of provision across Wales.

Estyn set out factors which would contribute to ensuring local authorities are able to place a child in a school which best suits his/her needs such as ensuring that an independent school's registration clearly states the categories of additional learning needs for which it caters. NASUWT commented that the proposal was reactive rather than proactive. They were concerned that the new system would only provide for Ministers to intervene after a placement has commenced rather than approving it beforehand.

Question 2 – It is proposed that independent schools will be required under s160 to register to admit pupils with AN if they cater for pupils who have significant and/or severe AN, equivalent to those currently with the same entitlement protection under a statement of SEN. Independent schools will be required to define the provision of AN that they will cater for. Do you agree with the proposal?

All of the respondents agreed with the proposal.

Conwy County Borough Council stated that 'The requirement to define the areas of ALN for which provision will be made is essential if Local Authorities are to be able to fund which schools can make appropriate provision without 'trawling' all schools'. The Children's Commissioner also stated that schools should be required to provide information on the qualifications and training of staff and managers to demonstrate they are able to meet the needs they state they can cater for.

Estyn highlighted several matters which they felt were needed for successful monitoring, including that schools' registration forms contain more detail and be updated annually.

Question 3 – It is proposed that independent schools registered to admit pupils with AN will be subject to annual monitoring visits, the same as those schools currently approved as suitable for the admission of children with SEN statements generally. Do you agree with the proposal?

All of the respondents agreed with the proposal, apart from Estyn which neither agreed nor disagreed.

The Children's Commissioner stated that it is essential that the annual monitoring process is robust in order to inspire confidence in parents and those commissioning services. Estyn stated that the focus of their inspections is to check on the overall provision and that placing authorities must retain responsibility for monitoring individual placements.

Question 4 – Do you agree with the proposal to publish annual monitoring reports of independent schools?

All of the respondents agreed with the proposal.

Comments included the fact that the proposals were a welcome move to increase transparency and openness. Another suggestion was that reports of inspectors should replicate those for maintained schools. It was noted that the published section of the report will contain general information about the school's strengths and areas for development. This should be useful for placing authorities and will remind schools of the importance of making sure that their provision is suitable.

Question 5 – Do you agree with the proposal to issue guidance to local authorities and proprietors of independent schools?

All of the respondents agreed with the proposal.

Correspondents welcomed the chance to contribute to the drafting of the guidance. A suggestion was made that the guidance should also address the rights of the child.

Question 6 – 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 response, one respondent welcomed the proposals and asked for more information on whether or not additional funding would be available. One respondent commented that schools need to undergo some sort of inspection to qualify to provide education for those with SEN, and then be listed as meeting the requirements, rather than registering provision once a child is statemented.

Two respondents asked for clarification on what arrangements would need to be put in place if an existing unstatemented student in school were to need a statement while on the school's register.

Next steps

The Welsh Ministers will seek to introduce legislation to give effect to the proposal to repeal s347 of the Education Act 1996 and register independent schools in Wales under Section 160 of the Education Act 2002, as well as the other proposed safeguards covered in this document.

Annex: List of respondents

Association of Teachers and Lecturers Cymru
Children's Commissioner for Wales
Conwy County Borough Council
Estyn
Howells School Llandaff
NASUWT Cymru
National Union of Teachers Cymru
Rydal Penrhos School
St David's College