



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Independent schools registration and operation guidance



Information

Information document no: 165/2014

Date of issue: November 2014

Independent schools registration and operation guidance

Audience	Proprietors of independent schools.
Overview	This handbook sets out the guidelines that independent schools should follow in registering their school. This document replaces <i>Independent schools information and registration handbook</i> Information document No: 099/2011.
Action required	This document explains the Welsh Government's procedures for registering new independent schools and provides guidance to existing independent schools on their legal obligations, including the Independent School Standards. All independent schools, proposed and existing, should have regard to this guidance.
Further information	Enquiries about this document should be directed to: School Governance and Organisation Branch Schools Management and Effectiveness Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6051 Fax: 029 2080 1044 e-mail: smed2@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/educationandskills
Related documents	A full list is contained in the Appendix at the end of the document. However the main documents are as follows. <i>Criminal Records Bureau: Basic Facts for School Volunteers</i> National Assembly for Wales Circular No: 02/03 <i>Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service</i> National Assembly for Wales Circular No: 34/02 <i>Safeguarding children in education: handling allegations of abuse against teachers and other staff</i> Welsh Government circular no: 009/2014 <i>Independent Schools which Admit Pupils with Special Educational Needs</i> Welsh Office Circular No: 37/94

Contents

Summary	2
Introduction	3
1. Scope of the registration arrangements	4
2. How to apply for registration	6
3. Standards for registration	11
4. Independent schools catering for pupils with special educational needs	21
5. Arrangements for inspection of independent schools	23
6. Compliance with other independent school legal responsibilities	24
7. Failure by an independent school to meet the registration standards	27
8. Other information	29
Appendix: List of relevant documents and publications	34

Summary

This guidance provides advice on how to register an independent school and guidance on the legal obligations placed on all independent schools. This handbook:

- explains the law (although the reader should note that it is not legal advice or a substitute for obtaining legal advice);
- includes an application form and lists the evidence required in support of an application;
- explains the “Standards” that each school will be expected to achieve and maintain in order to become registered and to stay on the register;
- outlines the role of the inspection agencies of Estyn and Care and Social Services Inspectorate Wales in monitoring the “Standards”; and
- outlines the powers available to the Welsh Government where an independent school fails to meet the required standards.
- outlines Welsh Government good practice procedures for maintaining registered independent school status including requesting a change to an independent school’s registration conditions, the annual census return and procedures for independent school’s with no pupils on roll.

In amending this non-statutory guidance, the Welsh Government intends to clarify certain aspects of the independent school classification and the legal obligations placed on independent schools. The Welsh Government has also amended this guidance to reflect changes to external organisations and some of their legal requirements for independent schools.

The Welsh Government is currently reviewing the current regulations relating to independent schools in Wales with a view to updating the legal requirements for independent schools. This guidance will, in due course, be further amended to reflect any and all changes to regulations for independent schools.

Introduction

All independent schools in Wales must be registered with the Welsh Government. Applications for registration must be made before a school admits pupils. It is illegal to operate an unregistered school.

This handbook is intended to set out the requirements of the legislation for proprietors¹, and to help those intending to apply for registration. It offers advice about commonly raised points. **The handbook is not legal advice and is not a substitute for seeking independent legal advice.**

For ease of reference, this handbook has been split into sections:

- Section 1 sets out the scope of the registration arrangements and explains which establishments are categorised as independent schools.
- Section 2 explains in detail how you should apply for registration.
- Section 3 sets out the standards for registration.
- Section 4 explains the arrangements for schools for pupils with Special Educational Needs.
- Section 5 deals with inspection.
- Section 6 is about independent school's ongoing legal obligations including requesting changes to registered conditions:
- Section 7 sets out the action to be taken where an independent school fails to meet one or more of the required standards.
- Section 8 covers information on sundry topics of interest.

To apply to register an independent school or for further information on any points raised in this handbook, please contact:

School Governance and Organisation Branch
Schools Management and Effectiveness Division
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Tel: 029 2082 6051

Fax: 029 2080 1044

E-mail: smed2@wales.gsi.gov.uk

¹ For the purposes of Part 10 of the Education Act 2002 and regulations made under the Act, "proprietor" means the person or body of persons responsible for the management of the school and can include a sole proprietor, governing bodies, Trustees or Directors (section 579 of the Education Act 1996).

1. Scope of the registration arrangements

What is an independent school?

1.1. In law² an independent school is any school that provides full time education for:

- i. five or more pupils of compulsory school age; or
- ii. one or more pupils of compulsory school age with a statement of special educational needs, or who is in public care (within the meaning of section 22 of the Children Act 1989).

An independent school is not maintained by a local authority.

1.2. Any school that meets the definition must be registered with the Welsh Government. No establishments outside the scope of the definition will be registered.

1.3. Anyone who conducts an independent school that is not a registered is breaking the law and may be liable to a fine and/or imprisonment.

What is Full Time Education?

1.4. There is no legal definition of 'full-time'. However, we consider an establishment to be providing full-time education **if it is providing education which is intended to provide all, or substantially all, of a child's education.**

1.5. Estyn may inspect an establishment it considers may be operating as an unregistered independent school. In such cases, Estyn will assess whether the establishment meets the definition of an independent school, which will include assessing whether or not the establishment is providing all or substantially all of child's education, taking into account any other forms of education that might be provided from other sources.

1.6. If your establishment falls outside the definition of an independent school given above your establishment need not be registered with the Welsh Government. However local authorities will need to be satisfied that parents of children attending your establishment are meeting the legal requirement to ensure that their children receive education suitable to their age, ability and aptitude.

Compulsory school age

1.7. A child will reach compulsory school age at one of the following three dates in the year; 1 September, 1 January or 1 April. Which of these compulsory school age dates is to be applied will be determined by the date of the child's fifth birthday as illustrated below:

² Section 463 of the Education Act 1996.

- if a child's fifth birthday falls between 1 April and 31 August they will become of compulsory school age on 1 September;
- if a child's fifth birthday falls between 1 September and 31 December they will become of compulsory school age on 1 January;
- if a child's fifth birthday falls between 1 January and 31 March they will become of compulsory school age on 1 April.

For example: A child born on 1 January 2005 will have their fifth birthday on 1 January 2010 and, therefore, will not be five before the eligibility date of 1 January 2010, but will be five before 1 April 2010. They will not, therefore, become of compulsory school age until 1 April 2010. A child ceases to be of compulsory school age on the last Friday in June of the school year in which he or she attains the age of 16.

What if I intend to provide education for children under 5 years?

- 1.8.** Establishments that cater primarily for children under the age of 5 are only required to register as an independent school if they also have at least five pupils of compulsory school age or a pupil of that age with a statement of special education needs or who is in public care and which provides full-time education.
- 1.9.** However, if an establishment caters solely for children under the age of 5, it must register with the Care & Social Services Inspectorate Wales (CSSIW).

CSSIW
 Welsh Government office
 Rhydycar Business Park
 Merthyr Tydfil
 CF48 1UZ
 Telephone: 01443 848450

What if I intend to provide education for students over 16 years?

- 1.10.** An establishment that provides solely for students over the age of 16 will not be registered with the Welsh Government because it is outside the scope of the definition of an independent school.
- 1.11.** However, establishments that also cater for five or more compulsory school age pupils or at least one pupil of compulsory school age with a statement of special education needs or in public care must register as an independent school.

2. How to apply for registration

Applications for registration must be made and approved before a school admits pupils.

2.1. Regulations³ made under the Education Act 2002 set out standards that all independent schools must satisfy as a condition of registration and also of remaining registered. These regulations cover:

- the quality of education provided by the school;
- the spiritual, moral, social and cultural development of pupils;
- the welfare, health and safety of pupils;
- the suitability of proprietors and staff;
- the premises of and boarding accommodation at the school;
- the provision of information; and
- the way in which complaints are handled.

2.2. Estyn inspects schools to judge compliance with the standards at the following times:

- before an application for registration is approved;
- between 3 and 6 months after registration is approved; and
- thereafter, during regular inspections within six years by Estyn, with the addition that Estyn visits schools with pupils with statements of special education needs annually.

2.3. Schools will not be registered unless they meet the standards. If, after registration they do not meet the standards the Welsh Government will require shortcomings to be put right. The Welsh Government may remove a school from the register if it is satisfied that one or more of the standards is not being met or that pupils are at risk of serious harm. It is illegal to operate an unregistered school, so any school removed from the register must close.

Making an Application to Register

2.4. Before making an application:

- read this handbook so that you understand the standards the school must meet.

It is also recommended that you consider the following Welsh Government guidance documents:

³ Independent School Standards (Wales) Regulations 2003 (S.I. 2003/3234) which can be found at: <http://www.legislation.gov.uk/wsi/2003/3234/contents/made>

- Circular 005/2008 – "Safeguarding Children in Education: The Role of local authorities and governing bodies under the Education Act 2002"⁴; I
- Circular 009/2014 – "Safeguarding Children in Education: Handling Allegations of abuse against teachers and other members of staff
- Circular 34/02 "Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service"⁵;
- Circular 02/03 "Criminal Records Bureau: Basic Facts for School Volunteers"⁶.
- Circular No: 018/2009 – Reporting Misconduct and Incompetence in the Education Service⁷

You may also wish to consider the regulations that set the standards for independent schools and other matters:

- the Independent Schools (Provision of Information) (Wales) Regulations 2003⁸;
- the Independent Schools Standards (Wales) Regulations 2003⁹;
- the Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007¹⁰;
- the Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009¹¹;
- the Independent Schools (Publication of Inspection Reports) (Wales) Regulations 2003¹²;
- the Independent Schools (Religious Character of Schools) (Designation Procedure) (Wales) Regulations 2003¹³;
- the Education (School Premises) Regulations 1999¹⁴.

Please note that the above regulations are currently subject to review. This information document will be updated to reflect any changes to the regulations.

The Registration Application

2.5. There are both a downloadable and an electronic application form on the Welsh Government website. You should only make an application when you have assembled all the information needed. If submitting an application in hard copy, **two copies** of the following documents should be enclosed with your completed application. Items 2, 3, 4 & 5 may instead be submitted electronically in Microsoft Word or as PDF documents.

⁴ <http://wales.gov.uk/publications/circular/2008/safeguardingchildren/?lang=en>
<http://www.google.co.uk/url?url=http://learning.wales.gov.uk/docs/learningwales/publications/140410-safeguarding-children-in-education-en.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=71xjVOzGEMfD7gaC34Fo&ved=0CBQQFjAA&usq=AFQjCNFya5C4qXHZii44Z9QT0D2pGJiX1g>

⁵ http://wales.gov.uk/topics/educationandskills/publications/circulars/Circular_34_02_Preventing_Unsu1?lang=en

⁶ http://wales.gov.uk/topics/educationandskills/publications/circulars/Criminal_Records_Bureau_Basic_1?lang=en

⁷ <http://wales.gov.uk/topics/educationandskills/publications/circulars/reportingmisconductcircular/?lang=en>

⁸ <http://www.legislation.hmso.gov.uk/legislation/wales/wsi2003/20033230e.htm>

⁹ <http://www.legislation.hmso.gov.uk/legislation/wales/wsi2003/20033234e.htm>

¹⁰ <http://www.legislation.gov.uk/wsi/2007/947/contents/made>

¹¹ <http://www.legislation.gov.uk/wsi/2009/2544/regulation/4/made>

¹² <http://www.legislation.hmso.gov.uk/legislation/wales/wsi2003/20033232e.htm>

¹³ <http://www.legislation.hmso.gov.uk/legislation/wales/wsi2003/20033233e.htm>

¹⁴ <http://www.legislation.hmso.gov.uk/si/si1999/19990002.htm>

1. Plans of the school, drawn to scale in square metres, showing the layout of the premises and accommodation of all buildings.
2. Detailed curriculum policies, schemes of work (for the subjects taught) and the procedures by which pupils' work and progress will be assessed.
3. Copies of the school's written policy on:
 - i. Bullying (which should have regard to Circular 23/03: "Respecting Others: Anti-Bullying Guidance"¹⁵);
 - ii. Safeguarding and promoting the welfare of children who are pupils at the school (which should have regard to Circular 005/2008 – "Safeguarding Children in Education: The Role of local authorities and governing bodies under the Education Act 2002"¹⁶; (see also Circular 009/2014 – Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other members of staff.
 - iii. Safeguarding and promoting the health and safety of pupils on activities outside the school and¹⁷
 - iv. Promoting good behaviour amongst pupils setting out the sanctions to be adopted in the event of pupil misbehaviour.
4. A copy of the school risk assessment as required by the Regulatory Reform (Fire Safety) Order 2005¹⁸, as amended.
5. A copy of the school complaints procedure, as outlined in paragraph 7 of the Schedule to the Independent Schools Standards (Wales) Regulations 2003.

2.6. All independent schools must satisfy the Welsh Government of the suitability of the proprietor. The proprietor must be subject to a check undertaken by the Disclosure and Barring Service (DBS). **For the purposes of the law the proprietor means the person or persons responsible for the day to day management of the school.** The proprietor can be an individual person, or a group of persons sitting on a governing body, trustees or directors of a company. In the case of a proprietor who is a corporation (e.g. limited company), Scottish firm or body of persons (e.g. trustees or governing body) the responsible individual should apply for a DBS check. In the case of trustees or directors or governing bodies, the control may be shared between several of them. In that case they may all apply for a DBS check or they may decide collectively which one or more of them will be the person responsible for the day to day management of the school. If they do this, they must appreciate that the persons chosen become responsible for the school for the purposes of the education law for independent schools. For instructions on how to apply for proprietor checks see Chapter 3. These procedures must also be followed where there are changes to the proprietor or nominated responsible person.

¹⁵ <http://wales.gov.uk/topics/educationandskills/publications/circulars/circular2303/?lang=en>

¹⁶ <http://wales.gov.uk/publications/circular/2008/safeguardingchildren/?lang=en>

¹⁷ <http://wales.gov.uk/topics/educationandskills/allsectorpolicies/healthandsafety/educationalvisits/?lang=en>

¹⁸ <http://www.legislation.gov.uk/ukxi/2005/1541/contents/made>

2.7. In addition, in the case of a proprietor who is corporation (e.g. a limited company), Scottish firm or body of persons (e.g. trustees or governing body) the proprietor must ensure that each member of the corporation, firm or body is DBS checked if each of the following two conditions applies:

1. the member holds 5% or more of the company's share capital; and
2. the member is an individual whom a criminal records certificate under section 113A of the Police Act 1997 must be issued by the Secretary of State in response to an application for such.

2.8. The proprietor of an independent school is responsible for ensuring that any staff at the school, whether under a contract of employment, under a contract for services or other than under a contract, has been subject to recruitment and vetting checks. These checks include an enhanced criminal background check, which must be carried out before their employment begins. To do this, proprietors must register direct with the DBS or use the services of a third party (umbrella body) to enable checks to be undertaken.

Are there any restrictions about the name of the school?

2.9. If the name you are proposing for your school may be construed as implying a Royal connection e.g. Queen's, King's, Prince's etc, the adoption of that name requires approval from the Welsh Government as part of your application.

2.10. Applications for use of the word 'University' in a school title or business title should be made to the Welsh Government as part of your application. The Welsh Government will in turn, liaise with The Privy Council Office to seek agreement on these applications.

2.11. In the absence of approval to use a name, you will be invited to suggest a different name. Schools will only be registered if the name is suitable.

What happens once the initial application form is received?

2.12. When a complete application is received the Welsh Government sends copies to Estyn. In the case of a boarding school or a school on the same premises as a Children's Home, CSSIW will also be contacted. Each organisation will consider the application and report their recommendations to the Welsh Government. These will be taken into account in determining whether your school should be registered. Estyn will need to visit the school in order to determine whether the school meets the prescribed standards for registration. They will make direct arrangements with you.

2.13. If you wish to provide new boarding accommodation at a new or existing school, CSSIW will also wish to visit the school. They will also make direct contact with you to arrange a suitable time and date. These visits must take place before the Welsh Government makes a decision about your application.

2.14. If you wish to provide new residential care, as a Children's Home with educational provision, you will need to submit a separate application to register the care element of the provision directly with CSSIW.

What will the inspectors look for?

2.15. Inspection will seek evidence to judge whether proposed premises are safe and suitable, the proposed curriculum is satisfactory and that policies are in place to protect pupils' welfare, health and safety. Inspection of actual teaching of pupils will obviously not be inspected until the school is open.

How long will the registration process take?

2.16. The registration process will take at least three months from receipt of all the necessary information. Applications to register should therefore be made well in advance of the proposed admission of pupils. It is important that you send all the information that has been requested.

2.17. When inspection is complete the Welsh Ministers will consider the application and decide whether the school may be registered and open. The Welsh Government keeps a register of all independent schools and the school will be added to the register on the date the Minister has agreed it may open.

Will I be notified once my school has been included on the Register of Independent Schools?

2.18. Yes. The Welsh Government will write to confirm that your school has been registered. You must not admit any pupils before you receive this letter. The letter will include a unique reference number for the school.

What happens after my school is registered?

2.19. After three months of operation Estyn will inspect your school again. If the school is a boarding school or provides residential care it may also be inspected again by CSSIW. These follow-up inspections will be to confirm that you continue to meet the standards for registration once pupils have been admitted and the school is operational.

What happens if my application is unsuccessful?

2.20. The Welsh Government's letter will explain the reasons for turning down your application. You may resubmit your application but the Welsh Government will only consider a resubmission if it is convinced that the reasons for failure have been addressed. **Under no circumstances should you admit pupils if your application is unsuccessful because it is illegal to operate an unregistered independent school.**

3. Standards for registration

What are the standards that independent schools will be required to satisfy in order to be registered?

- 3.1** There are a range of standards against which independent schools will be judged. These must be satisfied before registration will be granted and continue to be satisfied as a condition of ongoing registration thereafter. The standards are set out in the Education (Independent Schools Standards) Regulations 2003¹⁹. They are described in broader detail below.

The Quality of Education provided by the school

- 3.2** Schools must offer full-time supervised education for pupils of compulsory school age which includes subject matter appropriate to the ages and aptitude of the pupils (including those with special educational needs). The school must draw up a written curriculum policy setting out the school's approach to teaching, which is supported by schemes of work (for each subject taught). The regulations are not intended to be prescriptive about the way a school organises its curriculum, and they do not require the school to follow the National Curriculum. However, the school should give pupils experience in the following areas, and plans and schemes of work must illustrate how each area is to be woven into the school curriculum.

- **Linguistics:** this area is concerned with developing pupils' communication skills and increasing their command of language through listening, speaking, reading and writing. In all schools there must be lessons in written and spoken English or Welsh. Many schools will also teach other languages.

- **Mathematics:** this area helps pupils to make calculations, to understand and appreciate relationships and patterns in number and space and to develop their capacity to think logically and express themselves clearly. Their knowledge and understanding of mathematics should be developed in a variety of ways, including practical activity, exploration and discussion.

- **Science:** this area is concerned with increasing pupils' knowledge and understanding of nature, materials and forces and with developing the skills associated with science as a process of enquiry: for example, observing, forming hypotheses, conducting experiments and recording their findings.

- **Technology:** we do not wish to be prescriptive about how schools develop a curriculum to teach technological skills and we recognise some schools would not wish to teach some of the aspects below e.g. ICT (information and communication technology). We hope a wide enough range of examples is quoted to enable schools to meet the regulations. Technological skills can include the use of ICT developing, planning and communicating ideas; working with tools, equipment, materials and components to produce good quality products; and evaluating processes and products.

¹⁹ <http://www.legislation.hmso.gov.uk/legislation/wales/wsi2003/20033234e.htm>

• **Humanities and social science:** this area is concerned with people and with their environment, and how human action, now and in the past, has influenced events and conditions. In most schools the subjects of history and geography make a strong contribution to this area.

• **Physical exercise:** this area aims to develop the pupils' physical control and coordination as well as their tactical skills and imaginative responses, and to help them to evaluate and improve their performance. Pupils should also acquire knowledge and understanding of the basic principles of fitness and health.

• **Aesthetic and creative:** this area is concerned with the processes of making, composing and inventing. There are aesthetic and creative aspects of all subjects, but some make a particularly strong contribution including art, music, dance, drama and the study of literature because they call for personal, imaginative, and often practical, responses.

3.3 There is currently no requirement that teachers in independent schools must be qualified teachers, but those who are not should have relevant expertise or experience. Residential schools will also be expected to employ adequate ancillary staff and childcare staff with appropriate qualifications and experience. An independent school that admits pupils with special educational needs must have sufficient numbers of suitable staff.

Spiritual, moral, social and cultural development of pupils

3.4 The school is expected to ensure that it plans and provides effectively in order to develop pupils' spiritual, moral, social and cultural awareness. Subject areas such as personal, social and education (PSE) and religious education may make strong contributions, but work within all other subjects may also contribute.

3.5 Pupils should be led towards distinguishing right from wrong and towards acting consistently with their beliefs and with a view to the consequences of their own and others' actions. In addition the school should:

- lead pupils towards becoming confident and positive contributors to their community and effective users of its services and facilities according to their maturity;
- enable pupils to gain insights into the origins and practices of their own cultures, and into those of the wider community; and
- take steps to ensure that pupils appreciate racial and cultural diversity and avoid and resist racism.

Welfare, health and safety of pupils

3.6 The school should draw up and implement a written policy that addresses the following:

- the safety and welfare of children who are pupils at the school. You should comply with Welsh Government Circular 005/2008 – "Safeguarding Children in Education: The Role of local authorities and governing bodies under the Education Act 2002",

Welsh Government Circular 009/2014 – Safeguarding Children in Education: Handling Allegations of abuse against teachers and other members of staff and the prevention of unsuitable people from working with children and young persons which has regard to NAFW circular 34/02 “Child Protection: Preventing Unsuitable People from Working with Children and Young Persons”, together with the supplementary guidance NAFW circular 02/03 “Criminal Records Bureau: Basic Facts for School Volunteers”;

- the safeguarding and health and safety of pupils on activities at the school and outside the school with regard to the Welsh Government guidance²⁰;
- the prevention of bullying. You should have regard to National Assembly for Wales Circular 23/03 "Respecting Others: Anti-Bullying Guidance"; and
- promotion of good behaviour amongst pupils and the sanctions to be adopted in the event of pupil misbehaviour.

3.7 All schools must have and implement effectively satisfactory arrangements for:

- first aid;
- ensuring pupils are properly and effectively supervised; and
- keeping a written record of sanctions for serious pupil disciplinary offences.

Boarding Schools

3.8 Boarding schools are those that provide overnight accommodation arranged or provided by the school, at the school or elsewhere, but excluding accommodation for pupils being accommodated away from the school premises during a brief school trip. This includes pupils who are accommodated elsewhere under arrangements made by the school, whether or not the accommodation is provided off site by a third party, e.g. a host family or landlord. Unless the accommodation arrangements are made entirely by the child’s parent(s), the welfare responsibility rests with the school.

3.9 Independent Boarding Schools are inspected by CSSIW who assess the boarding provision against the “National Minimum Standards for Boarding Schools”²¹. These cover five broad areas as follows:

- welfare policies and procedures;
- organisation and management;
- welfare support for boarders;
- staffing; and
- premises.

²⁰<http://wales.gov.uk/topics/educationandskills/allsectorpolicies/healthandsafety/educationalvisits/?lang=en>

²¹http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006331

3.10 Schools providing residential care for wholly or mainly for pupils with special educational needs will need to refer to the “National Minimum Standards for Residential Special Schools” or “National Minimum Standards for Children’s Homes” as appropriate.

Fire Precautions

3.11 Under the Regulatory Reform (Fire Safety) Order 2005²², it is the duty of an employer to conduct a suitable and sufficient risk assessment of the risks in the workplace to which people are exposed for the purpose of identifying general fire precautions necessary. A formal record should be made of the significant findings and measures which have been taken to mitigate the risks. The assessment should include:

- the fire risk;
- the requirement for fire detection and warning;
- means of escape;
- fire fighting equipment;
- planning for an emergency and training for staff; and
- maintenance and testing of fire safety equipment.

3.12 Every year, as part of the annual census data form, the Welsh Government will request a copy of the Risk Assessment. However, if there are changes to accommodation, or a greater than 10% increase in pupil numbers or outstanding Fire Authority recommendations, an earlier inspection is advised. Further advice about risk assessments can be found in the booklets/guides listed in the Appendix, obtainable from The Stationery Office (TSO).

Registers

3.13 Independent school proprietors are required to keep registers of both admissions and attendance and proprietors should acquaint themselves with the Education (Pupil Registration) (Wales) Regulations 2010²³ which govern this.

3.14 These regulations specify the detail required in the registers and the manner of their completion. Proprietors of independent schools must make the registers available for inspection. Proprietors are also required to make returns to the local authority detailing the names of any children who fail to attend school regularly. Further guidance on attendance registers is available in NAFW circular 47/2006; "Inclusion and Pupil Support"²⁴. The duty to keep attendance (as distinct from admissions registers) does not apply where all the children in an independent school are boarders, but their maintenance in such establishments is, nevertheless, desirable.

²² <http://www.legislation.gov.uk/uksi/2005/1541/contents/made>

²³ <http://www.legislation.gov.uk/wsi/2010/1954/contents/made>

²⁴ <http://wales.gov.uk/topics/educationandskills/publications/circulars/2463797/?lang=en>

The suitability of proprietors and staff

3.15 Whilst the following paragraphs relating to proprietors are aimed at new school applications, existing schools must follow this procedure if there is a change of proprietor or nominated responsible person.

Suitability of proprietors²⁵

3.16 As part of the application process or if the proprietor or nominated responsible person changes, the proprietor is required to contact the Welsh Government requesting an application form for a DBS Enhanced Disclosure. A Disclosure provides details of a person's criminal record including convictions, cautions, reprimands and warnings held on the Police National Computer. An Enhanced Disclosure may also contain details of information held on local police records which the police consider to be relevant to the person's proposed post or position.

3.17 An application form for a DBS check can be obtained by telephoning the Welsh Assembly Government on 029 2082 6051 or by e-mail at **smed2@wales.gsi.gov.uk**.

Please do not send your application direct to the DBS. On completion, the application form should be forwarded in an envelope marked "Confidential" and "Only for the attention of":

Mr Alan Chapple
School Governance and Organisation Branch
Schools Management & Effectiveness Division
Welsh Government
3rd Floor, CP2
Cathays Park
Cardiff
CF10 3NQ

3.18 You will then be contacted to arrange an interview with a Welsh Government official who has been authorised to countersign DBS disclosure applications. Each applicant must include the following documentation with their application: a document with a recent photograph – such as a driving licence or passport; proof of current address; and proof of change of name if applicable. The applicant must provide a cheque for £44 made payable to the Welsh Government which pays the fee that the DBS charges the Welsh Government. The interview will last about 15 minutes. Its purpose is to establish that the applicant's identity. If satisfied, the Welsh Government will forward the application to the DBS. The decision to countersign and forward the application is solely for the Welsh Government Countersigning Officer to make. When the DBS has processed the application it will write to the applicant and issue them with a copy of their Disclosure certificate. The Welsh Government does not hold copies of these certificates.

²⁵ For the purposes of the Education Act 2002 and regulations made under the Act, "proprietor" means the person or body of persons responsible for the management of the school and can include a sole proprietor, governing bodies, Trustees or Directors.

- 3.19** The Welsh Government complies with the DBS Code of Practice. Under the Code, sensitive personal information must be handled and stored appropriately and must be kept for only as long as it is necessary.
- 3.20** The disclosure of a criminal record, or other information, will not bar a person from becoming a proprietor of an independent school unless the Welsh Government considers that the conviction renders them unsuitable. In making this decision the Welsh Government will consider the nature of the offence, how long ago the offence was committed, the person's age when the offence was committed and other factors which may be relevant.
- 3.21** In any case where the information supplied by the DBS differs from that provided by the applicant, applicants will be given the opportunity to explain why. Anyone who believes that the information in the DBS Disclosure is inaccurate, or relates to someone else with the same name, is able to appeal to the DBS.
- 3.22** Once an applicant has received a satisfactory Disclosure from the DBS the Welsh Government will process the application to register the school once the other pre-registration checks on standards at the school have been completed.

Checks on staff and volunteers

- 3.23** All proprietors will be responsible for ensuring staff and volunteers working in independent schools have been subject to criminal record checks. To do this, proprietors must register with the DBS or use the services of a third party (umbrella body) to enable checks to be undertaken.
- 3.24** As the proprietor of an independent school you are considered by the DBS as a regulated provider and as such you are legally responsible for ensuring that any new entrant to your regulated activity (i.e. employed by the school or a volunteer) is subject to the appropriate pre-recruitment checks.
- 3.25** Any school that fails to ensure that staff and/or volunteers are DBS checked, or which appoints a person in contravention of a prohibition or restriction, may have seriously breached standards. The school may be struck off the register of independent schools and forced to close.
- 3.26** Further guidance on a range of pre-appointment checks is given in Circular 34/02 "Child Protection: Preventing Unsuitable People from working with Children and Young Persons in the Education Service".²⁶

Medical Fitness

- 3.27** It is important that employers satisfy themselves of the medical fitness of their employees. We advise schools to note the provisions of the Act in relation to asking questions regarding medical fitness. Guidance is available at www.equalityhumanrights.com.

²⁶ <http://wales.gov.uk/publications/circular/circulars2002/NAFWC342002?lang=en>

3.28 Disabled staff may be effective employees and may also be role models for disabled pupils or help educate able bodied people about disability. Many disabled people will be medically fit to teach, though employers may have to make reasonable adjustments under the Equality Act 2010²⁷ to enable disabled people to carry out their duties effectively.

School Premises

3.29 The Regulations set out what is required, but where they refer to the Education (School Premises) Regulations 1999²⁸, you will need to refer to those regulations to establish the precise requirements. Applicants may find it helpful to have further clarification about classroom sizes as follows.

3.30 The size of the classrooms must ensure both the health and safety of pupils and the effective delivery of teaching. Overcrowding in classrooms would contravene these requirements. Teachers must be able to move around the classroom easily and be able to give instruction to each pupil and be able to reach pupils in the event of an emergency. Pupils must be able to evacuate the classroom safely.

3.31 Commonly **primary** schools will include a variety of types of space to accommodate a range of activities:

- general teaching areas –which provide the registration and ‘home base’ for each class, and are probably where most of the teaching will take place;
- halls - these will include the main hall for assembly and activities such as PE and some music; and
- learning resource areas – these may be a library, a computer room, or any other specialist teaching area.

3.32 For **secondary** age pupils, the teaching area will commonly include:

- timetabled class rooms - for general teaching, practical areas such as science laboratories, music and drama spaces;
- halls - these will include assembly halls, sports halls and activity halls; and
- learning resource areas – such as independent study and reference areas such as a library, computer room and space for non-timetabled groups and other ad-hoc uses.

3.33 Further guidance for Secondary schools is available in Building Bulletin 98 and for Primary schools in Building Bulletin 99²⁹.

3.34 Further guidance on accommodation requirements for children with special needs and disabilities is available in Building Bulletin 102³⁰.

²⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

²⁸ <http://www.opsi.gov.uk/si/si1999/19990002.htm>

²⁹ <http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolbuildings/designguidance/sbareguidelines/>

³⁰ <https://www.gov.uk/government/publications/building-bulletin-102-disabled-children-and-children-with-sen>

Residential and Boarding Accommodation

3.35 Independent boarding schools must comply with the standards of the National Minimum Standards for Boarding Schools (standards 40 -52)³¹ and residential Special Schools with the National Minimum Standards for Residential Special Schools (standards 23-26)³².

The provision of information

3.36 Independent schools must provide all parents and prospective parents with the following information:

- the school's address, e-mail address and telephone number, and the name of the headteacher;
- the name, usual residential address, e-mail address and telephone number of the proprietor³³;
- where there is a board of governors, the name and contact details of its Chairperson;
- a statement of the school's ethos (including any religious ethos) and aims;
- particulars of the school's policy on and arrangements for admissions, discipline and exclusions; and
- particulars of educational and welfare provision for pupils with special educational needs and pupils for whom English or Welsh is an additional language.

3.37 Parents must also have the opportunity to be provided with an annual report on their child's academic progress.

3.38 Schools must also give parents information about the school's written policies on:

- the curriculum;
- preventing bullying;
- safeguarding and promoting the welfare of children;
- safeguarding and promoting the health and safety of children on activities outside the school; and
- promoting good behaviour amongst pupils, and the sanctions to be adopted in the event of misbehaviour.

3.39 Schools must also give parents information about the number of staff employed at the school, including temporary staff, together with a summary of their qualifications.

³¹ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006331

³² http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4006472

³³ Where the proprietor is a corporation, a Scottish firm or body of persons, the address and telephone number of its registered or principal office.

Complaints

3.40 All parents of children in independent schools must have access to and be given on request the school's written complaints procedure. Complaints should be investigated, properly considered, and the findings made known to the proprietor, head teacher, complainant and others about whom a complaint has been made.

3.41 Independent boarding schools must also comply with the Complaints Procedure required under Standard 5 of the National Minimum Standards for Boarding Schools³⁴ or, if appropriate, Standard 4 of the National Minimum Standards for Residential Special Schools³⁵, and the Children's Homes (Wales) Regulations 2002³⁶ (Regulation 24).

3.42 The complaints procedure must:

- a) allow for a complaint to be made and considered initially on an informal basis;
- b) if the complainants are not satisfied with the informal approach the school should make provision for the complaint to be made in writing;
- c) if the complainants wish the matter to be considered further, the procedure should make provision for a hearing before a panel of at least 3 people who are not directly involved in the matters detailed in the complaint;
- d) where a panel hearing is convened, one person on the panel must be independent of the management and running of the school. The proprietor is responsible for the appointment of the panel. The procedure must set out clear time scales for the management of the complaint i.e. providing adequate notice of the hearing etc;
- e) parents must be allowed to attend and be accompanied to a panel hearing if they wish;
- f) it must provide for the panel to make findings and recommendations, and ensure that the complainant, proprietors, head teachers, and, where relevant, the person complained about, are given a copy of any findings and recommendations;
- g) written records must be kept of all complaints and their outcomes, whether they were resolved at the preliminary stage, when a complaint is submitted in writing or whether they proceeded to a panel hearing;
- h) all correspondence, statements and records of complaints must be kept confidential but must be made available to Estyn when they inspect. Copies must also be made available to the Welsh Government on request; and
- i) where the school provides boarding accommodation, the procedure complies with Standard 5 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 4 of the National Minimum Standards for Residential Special Schools.

³⁴ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006331

³⁵ http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4006472

³⁶ <http://www.opsi.gov.uk/legislation/wales/wsi2002/20020327e.htm>

3.43 Whilst we do not wish to be prescriptive about who schools should appoint as an independent person, our general view is that people who have held a position of responsibility and who are used to analysing evidence and putting forward balanced arguments would be suitable. Examples of persons likely to be suitable are serving or retired business people, civil servants, heads or senior members of staff at other schools, people with a legal background and retired members of the Police Force might be considered by schools. Schools will of course have their own views.

4. Independent schools catering for pupils with special educational needs

What if my school caters for pupils with special educational needs?

- 4.1 Schools who wish to admit children with statements of special educational needs (SEN) **must** be both “registered” and “approved”. These are separate systems within Welsh legislation and Independent schools require both in order to admit children with statements of SEN.
- 4.2 Schools can be “registered” to admit children with SEN as part as part of its conditions of registration (section 160 of the Education Act 2002). Under section 162 of this Act, schools can apply to the Welsh Government for material change for this provision. Guidance on submitting a material change request can be found in Chapter 6.
- 4.3 Under section 347 of the Education Act 1996 Welsh Ministers may “approve” an independent school to admit children with a statement of SEN generally. Where an application for material change relating to SEN is requested, dual consideration will also be given by Welsh Ministers to providing “approval” under section 347.
- 4.4 Where an independent school has not been generally “approved” Welsh Ministers may give consent to the individual placement of a child with a statement of SEN. The local authority should seek the Welsh Government’s consent for the placement. This does not prevent parents from making their own arrangements to pay for a place at an independent school of their choice, so long as the authority maintaining the statement is satisfied that the arrangements are suitable.
- 4.5 In the case of parents wishing to make their own arrangements for funding a placement for their child at a school, the school should ensure that appropriate arrangements for admitting pupils with a statement of SEN are in place.

Welsh Government’ Consent under section 347(5) of the Education Act 1996

- 4.6 In seeking consent from Welsh Minister’s to place a child with a statement of SEN into a school that has not be approved to do so, the local authority must provide a current statement of SEN, together with all appendices and a report of the latest annual review, to at the address below. Section 347 of the Education 1996 (as amended by section 174 of the Education Act 2002) also requires the LA to demonstrate that there is a place available at the independent school. Schools can assist this process by confirming the place in writing to the LA, and completing a brief outline of how they can meet the pupil’s needs. Further information on consents can be obtained from:

Additional Learning Needs Branch
Support for Learners Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Tel: 029 2082 5789

4.7 A local authority has a right of access to independent schools to monitor pupils with statements.

4.8 Some independent schools cater wholly or mainly for children with SEN. Such schools must meet the same standards of provision as would be expected in maintained special schools e.g. in relation to the employment of qualified and experienced teaching and care staff, and they must also comply with the Education (School Premises) Regulations 1999.

5. Arrangements for inspection of independent schools

What arrangements apply for the inspection of independent schools?

- 5.1** Following registration, schools will be inspected routinely by Estyn at least every six years to judge compliance with the registration standards and annually in schools with pupils with statements of special educational needs. Inspection will be more frequent where a school is giving cause for concern. There are currently no fees for Estyn inspections. From September 2010 Estyn introduced a new “Common Inspection Framework” in which self-evaluation is important. Guidance and a self-evaluation manual for independent schools are available at www.estyn.gov.uk.
- 5.2** CSSIW will inspect boarding accommodation and pupil welfare in boarding schools at least every 3 years, but annually in schools with pupils with statements of special education needs or schools also registered as a Children’s Homes. CSSIW may visit any school providing residential accommodation at any time, announced or unannounced. There are currently no fees for CSSIW inspections.
- 5.3** Local authority Social Services Departments or Child Protection Teams may become involved with independent schools in the course of child protection enquiries. Schools should familiarise themselves with the information and requirements explained in Circular 005/2008 – “Safeguarding Children in Education: The Role of local authorities and governing bodies under the Education Act 2002” and Circular 009/2014 – Safeguarding Children in Education: Handling allegations of abuse against teachers and other staff

Are Inspection Reports published?

- 5.4** Estyn’s reports are published on its website. Around four weeks after an Estyn inspection the school will be sent a draft of the report and will be given the opportunity to comment on any factual errors before the final report is published (around eight working weeks after the inspection). Shortly afterwards a copy will be placed on the Estyn website. The school will be responsible for ensuring that a copy of the full inspection report is provided to all parents of the school. In cases where a summary report has been provided, the school may instead send that to parents provided it makes arrangements for parents to have the full report on request. Where the pupil is subject to placement by a local authority, a copy of the report should be sent to each relevant authority.

6. Compliance with other independent school legal responsibilities

What changes need to be referred to the Welsh Government?

6.1 Section 162 of the Education Act 2002 requires that all independent schools must gain approval from the Welsh Government **before** implementing certain specified changes. The relevant changes are explained below, together with details of the supporting information which schools will need to provide to the Welsh Government when making an application to have a change approved.

- **Change of proprietor:** A new proprietor will have to apply for a DBS disclosure so that the Welsh Government can be satisfied that the new proprietor is suitable to work with children (see suitability of proprietors in Chapter 3 which explains the procedure for checks on proprietors).
- **Change of school address:** 2 copies of new school plans (drawn to scale in square metres) plus a current Fire Risk Assessment must be sent to the Welsh Government.
- **Alteration of premises:** approval must be obtained from the Welsh Government for alterations proposed to the premises or changes to the balance of educational or residential areas. The premises will be inspected by Estyn, and if relevant CSSIW, who will advise the Welsh Government on the proposed changes.
- **Age range of pupils:** copies of the following documentation will be required to support your application; schemes of work, assessment plans and the curriculum policy for the new age range, number of children in the new age group, number of additional teachers employed to teach the new age group and their qualifications and details of any changes in classroom accommodation in the school. If this involves building work to the existing premises please submit 2 copies of revised plans of the premises – drawn to scale in square metres and the revised fire risk assessment. Please note that if a school extends its age range to include nursery provision the school will need to discuss registration with CSSIW.
- **Maximum number of pupils:** the registration approval will state the maximum number of pupils that a school may admit based on pre-registration inspections which will have confirmed that the school can cater for up to this number of pupils. Any school wishing to expand will need to apply for approval to increase the maximum number of pupils permitted. Any school wishing to increase the pupil numbers should submit details of the increased number of pupils, number of additional teachers employed to teach the increased pupils and their qualifications and details of any changes in classroom accommodation in the school. If this involves building work to the existing premises, please submit 2 copies of revised plans of the premises drawn to scale in square metres and a revised Fire Risk Assessment.

- **Proposal to admit boys only, or girls only, or to become co-educational:** if the changes require any change to the school premises please submit 2 copies of the revised plans of the premises drawn to scale in square metres and revised fire risk assessment. We will also require a copy of the revised curriculum plans, details of the number of proposed new pupils and the number of additional teachers and their qualifications. If you currently admit boarding pupils we will also require details of any new non-teaching staff employed and their respective qualifications.
- **Proposal to provide boarding accommodation:** the Welsh Government will require 2 copies of the school plans of the premises drawn to scale in square metres, showing expected changes to premises (i.e. sleeping accommodation and revised fire risk assessment). We will also require details of the numbers of proposed boarders, age range and gender. Details of any proposed new staff employed and their qualifications should also be submitted. The school will have to meet the relevant National Minimum Boarding standards. A copy of these plans will be forwarded to CSSIW for their approval and inspection of the premises. Please note that if a school ceases to provide boarding accommodation they should also notify the Welsh Government.
- **Proposal to admit pupils with special educational needs:** the Welsh Government will require details of the numbers and age range of proposed pupils, together with information about the types of special educational needs to be catered for. Depending on the numbers of pupils to be catered for we may also require curriculum details, schemes of work and, where alterations have been made to the school premises, 2 copies of the school plans drawn to scale in square metres. If the school does not wish to be considered for general approval under section 347 of the Education Act 1996 as part of the material change request, then the school will need to state so in writing.

6.2 Applications for approval of a material change must be made in writing. The Welsh Government may remove a school from the register if it has not obtained approval prior to making material changes.

6.3 On receipt of a request for a material change the Welsh Government may seek views from others including Estyn, the local Fire Authority and CSSIW. In some cases the inspection authority will need to inspect the school in order to advise the Welsh Government. It is very important to make a request for change well in advance in order that approval is obtained in time.

6.4 Schools have a right to appeal against a rejection of an application by the Welsh Government to a First Tier Tribunal.³⁷

6.5 You should note that independent schools registered as Charities may be governed by a trust instrument or instruments (Royal Charters, Statutes) which limit the pupil intake of the school to one sex. Section 99 of, and Schedule 14 to, the Equality Act 2010 gives power to the Welsh Government to make an Order removing or amending the restriction to one sex. Where a school applies for an Order under Schedule 14 the

³⁷ Tribunals Services, Care Standards Tribunal, Mowden Hall, Staindrop Road, Darlington, Durham, DL3 9BG
Tel: 01325 392712 Email: CST@tribunals.gsi.gov.uk

school must publish their proposals in a public newspaper. The published notice must state the intentions of the school and ask for any representations to the proposal to be made to the Welsh Government. Further details will be supplied on request.

- 6.6** Where a material change is made without seeking approval, Welsh Ministers may issue a determination to remove the school from the Register of Independent Schools, or make an Order to cease using the premises for a particular purpose, or to cease admitting new pupils.
- 6.7** Tacit consent does not apply to an application to make a material change as there is a legitimate public interest in the outcome of these applications. If an application is not processed within six months it will not be deemed granted. This is to prevent changes to the registration of an independent school being approved inadvertently and subsequently resulting in a possible risk to the welfare, health and safety of children.

Annual Census Returns

- 6.8** Every January the Welsh Government issues all independent schools in Wales with a census form which it expects to be completed by the deadline given. These census forms help to maintain an accurate Register of Independent Schools and help the Welsh Government to ensure that all independent schools are complying with certain legal requirements, such as appropriate DBS checks for proprietors and material changes to registration.
- 6.9** Independent Schools are required in law³⁸ to complete the Welsh Government's annual census. **Failure to return the annual census form may result in a school being removed from the Register.**

³⁸ <http://www.legislation.gov.uk/en/wsi/2003/3230/regulation/5/made>

7. Failure by an independent school to meet the registration standards

What happens if a school fails to meet the standards?

7.1 If the Welsh Government considers that a school is operating with a material change to a school that has not been approved, if a school fails to meet one or more of the standards or that there is a risk of serious harm to the welfare of the pupils, it may order that the school be removed from the register of independent schools subject to 28 days right of appeal.

7.2 Usually, if a school does not meet one or more of the standards then the Welsh Government will:

- notify the school; and
- require the proprietor to submit an action plan within a specified period of time. This plan must set out the steps that the school will take to meet the standard(s), and the timescale within which each step will be completed.

7.3 Following submission of the action plan, the Welsh Government may seek advice from Estyn and will then:

- reject the plan; or
- approve the plan, with or without modifications.

7.4 At the request of the Welsh Government, Estyn will visit the school to check the progress of an approved action plan.

7.5 Where an action plan is not submitted, or is submitted but rejected, the Welsh Government may:

- determine that the school is to be removed from the Register of Independent Schools; or
- make an Order requiring the proprietor to cease using any specified part of the school premises, close any part of the school's operation, or cease to admit any new pupils as specified by the Order.

7.6 Where an action plan has been approved but the steps identified have not been taken by the required date, the Welsh Government may:

- substitute a later date;
- make an Order as above; or
- determine that the school is to be removed from the Register of Independent Schools.

7.7 Under the provisions of section 166 of the Education Act 2002, the proprietor of a school has a right of appeal to a First Tier Tribunal³⁹ against any Order made by the Welsh Government affecting the registration of the school.

The appeal must be lodged within 28 days.

What happens if the Welsh Government is satisfied that any person working at a school is unsuitable to work with children, unsuitable to work as a teacher or to take part in the management of the school?

7.8 Section 169 of the Education Act 2002, and the regulations made under it, allow the Welsh Government to remove a school from the register (i.e. close it down) if a person working there, or the proprietor, is subject to an order, decision or direction prescribed by the regulations or is doing work prescribed by the regulations. The Education (Independent Schools) (Unsuitable Persons) (Wales) Regulations 2009 list persons who are deemed to be unsuitable to do prescribed work in independent schools in Wales. Persons are deemed unsuitable to work in independent schools:

- a) on the grounds that the person is included in the children's barred list, for England and Wales, maintained by the DBS
- b) on the grounds that the person is unsuitable to work with children;
- c) on grounds relating to the person's misconduct;
- d) on grounds relating to the person's health; or
- e) on grounds of professional incompetence.

³⁹ Tribunals Services, Care Standards Tribunal, Mowden Hall, Staindrop Road, Darlington, Durham, DL3 9BG
Tel: 01325 392712 Email: CST@tribunals.gsi.gov.uk

8. Other information

Am I required to teach the National Curriculum?

- 8.1** The National Curriculum is not mandatory for independent schools. However, schools may obtain current information about the National Curriculum from:

Curriculum Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
Tel: 029 2080 1280

Website: <http://new.wales.gov.uk/topics/educationandskills/curriculumassessment>

When does a school become a Children's Home?

- 8.2** Under the Care Standards Act 2000⁴⁰, an independent school with boarders is defined as a Children's Home if the establishment accommodates one or more children for over 295 days per year in a two-year period. The number of pupils accommodated for shorter periods (e.g. the length of 3 normal terms) does not impact on the definition.
- 8.3** An independent school that meets the definition of a Children's Home requires registration with CSSIW. Please note that this is in addition to registration as an independent school with the Welsh Government. It is anticipated that this will mainly apply to the small number of schools within the independent sector which provide for pupils with very severe and complex special educational needs but there could be other circumstances when pupils are accommodated for more than 295 days per year (e.g. in the case of pupils from overseas).

Schools with no pupils on roll

- 8.4** To ensure that the Welsh Government and Estyn make the best use of the resources available annual monitoring visits are postponed whilst there are no pupils in attendance at a school. The Welsh Government allows an independent school to operate, with no pupils, for three years until registration lapses. After this the school will need to reapply for registration as the need arises.
- 8.5** If in this time a school plans to enrol pupils, they will be expected to notify the Welsh Government one term in advance or, in the event of emergency placements, as soon as possible to ensure that HMI Estyn can resume its monitoring and inspection function.

⁴⁰ A school is a children's home at any time if at that time accommodation is provided for children at the school and either–

(a) in each year that fell within the period of two years ending at that time, accommodation was provided for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days; or

(b) it is intended to provide accommodation for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days in any year; and in this subsection "year" means a period of twelve months

What are the requirements for reporting cases of staff misconduct or incompetence?

8.6 All employers (including teacher supply agencies) in Wales have a legal duty to report cases of professional misconduct and incompetence to the relevant authority as required under the Safeguarding Vulnerable Groups Act 2006 or the Education (Supply of Information) (Wales) Regulations 2009.

8.7 In cases where employers have removed an individual from a regulated activity, or would have done so if the person concerned had not otherwise ceased to engage in such activity, because the employer thinks-

- he or she has engaged in relevant conduct; or
- he or she may-
 - i. harm a child or vulnerable adult;
 - ii. cause a child or vulnerable adult to be harmed;
 - iii. put a child or vulnerable adult at risk of harm; or
 - iv. incite another to harm a child or vulnerable adult⁴¹.

8.8 In such cases employers must report the case to the DBS. In other cases where employers cease to use a registered teacher's services on grounds of misconduct; professional incompetence or conviction of a relevant offence and where the conduct does not involve the harm, or risk of harm, to a child, employers are required make a report to the General Teaching Council for Wales⁴².

8.9 Further guidance on the circumstances when a referral should be made and the information that should be supplied to the relevant authority can be found in the Welsh Government circular 18/2009 "Reporting misconduct and incompetence in the education service"⁴³ and Circular 009/2012 Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other members of staff.

8.10 Independent schools, which are approved for the placement of pupils with special educational needs, are under a separate duty to report misconduct dismissals or resignations⁴⁴.

What is the position with regard to planning permission?

8.11 Anyone intending to open a new school, or move to new premises, should apply to the local planning authority for planning permission to use the premises for school purposes.

⁴¹ See section 35 of the Safeguarding Vulnerable Groups Act 2006 at <http://www.legislation.gov.uk/ukpga/2006/47/contents>

⁴² See the Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008 at <http://www.legislation.gov.uk/uksi/2008/3265/contents/made>

⁴³ <http://wales.gov.uk/topics/educationandskills/publications/circulars/reportingmisconductcircular/?lang=en>

⁴⁴ The Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 SI No 651/1994⁴⁴ and The Education (Special Educational Needs) (Approval of Independent Schools) (Amendment) Regulations SI No 417/1998 which are available at:

<http://www.legislation.gov.uk/uksi/1994/651/contents/made>

<http://www.legislation.gov.uk/uksi/1998/417/contents/made>

8.12 The building control authority should also be informed of any change of use; this will apply whether it is proposed to use or alter existing premises or to provide new buildings on the site.

Is any financial help available to independent schools?

8.13 The Welsh Government does not provide financial help for independent schools. The Directory of Grant Making Trusts provides details of UK trusts and should be available from local libraries.

8.14 You may also wish to consult the Education Grants Directory, published by the Directory of Social Change.⁴⁵

8.15 Additionally the Welsh Independent Schools Council (WISC)⁴⁶ can provide general information about independent schools and can advise on ways of raising funds in order to finance payment of school fees.

What are the requirements on Disability Discrimination in Schools?

8.16 Part 2 of the Equality Act 2010 makes it unlawful to discriminate, against disabled pupils and prospective pupils in all aspects of school life unless you can show that to do so is a proportionate way to achieve a legitimate aim. The principle behind this legislation is that, wherever possible, disabled people should have the same opportunities as non-disabled people in their access to education. A person has a disability if he or she has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities.

8.17 Education provided at all independent schools in Wales is covered by the Act. This includes nursery classes and nursery provision at independent settings. The proprietor is responsible for ensuring that the school meets the requirements of the Equality Act 2010⁴⁷.

8.18 An independent school must not discriminate against a disabled person in relation to admissions to, or fixed term or permanent exclusions from, school.

Special Educational Needs and Disability Tribunal (SENTW)

8.19 The Special Educational Needs Tribunal for Wales (SENTW) was established in April 2003. In addition to its SEN jurisdiction, SENTW also determines claims of unlawful disability. It may hear claims about admissions and exclusions (in some circumstances) and education and associated services in schools. Under the Education (Wales) Measure 2009 children and young people share the same rights as parents to appeal in respect of SEN and the right to make a claim in respect of disability discrimination in schools, to the SENTW themselves. These rights will apply to the whole of Wales from 2015.

⁴⁵ Tel: 08450 777707 Website: <http://www.dsc.org.uk/>

⁴⁶ <http://www.welshisc.co.uk>

⁴⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

8.20 SENTW is able to order remedies it considers reasonable and set deadlines when directing action by schools. If a school fails to comply within the prescribed time limits, or if it has acted or is proposing to act unreasonably in complying with a SENTW order, the Secretary of State can make a direction to require compliance.

Planning Duties: Preparing Accessibility Plans for Disabled Pupils

8.21 Independent schools are obliged to prepare accessibility plans to:

- increase the extent to which disabled pupils can participate in the school's curriculum;
- improve the physical environment of the school in order to increase the extent to which disabled pupils are able to take advantage of education and associated services offered by the school; and
- improve the delivery to disabled pupils of information that is already provided in writing to non-disabled pupils.

8.22 Accessibility plans must:

- be in writing
- be within the resources that schools can afford
- be subject to inspection by HMI; and
- cover a period of 3 years.

8.23 Further information is available in Circular 15/2004 "Planning to Increase Access to Schools for disabled pupils"⁴⁸.

What Information is required from Independent schools for publication?

8.24 The School Performance Information (Wales) Regulations 2011 provide for the supply of information to parents that will assist them in choosing schools for their children and which will increase public awareness of the quality of education provided by schools. Information is required from independent schools on truancy rates and examination results by the Welsh Government, and the information will be published alongside comparable information about maintained schools by the Welsh Government.

What other legislation do I need to bear in mind?

8.25 It should be noted that independent schools are bound by the relevant provisions of the Health and Safety at Work Act 1974, the Equality Act 2010 and the Food Hygiene (Wales) Regulations 2006, as well as the relevant provisions of business/charity and employment legislation.

⁴⁸<http://wales.gov.uk/publications/circular/circulars04/NAFWC152004.jsessionid=MnGIM8JL2HW53R9jjhvfqHwp7ppS2gGblFmwMI0FzKPhhkrpNJpK!-853491638?lang=en>

Can my school participate in the Teachers' Pension Scheme?

8.26 Yes: enquiries should be made to <http://www.teacherspensions.co.uk> or in writing to:

Teachers Pensions
Capita Hartshead
Mowden Hall
Darlington
DL3 9EE

Tel: 08456 066166

Schools with Religious Character

8.27 An independent school may apply for Religious Character Status.⁴⁹ For further details contact:

School Governance and Organisation Branch
Schools Management and Effectiveness Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Tel: 029 2082 6051

Fax: 029 2080 1044

E-mail: smed2@wales.gsi.gov.uk

⁴⁹ The Independent Schools (Religious Character of Schools) (Designation Procedure) (Wales) Regulations 2003 can be found at: <http://www.legislation.gov.uk/wsi/2003/3233/contents/made>

Appendix: List of relevant documents and publications

All regulations and Acts of Parliament are available online on the Office of Public Sector Information (OPSI) website at <http://www.opsi.gov.uk>

The Stationery Office publishes many of the documents mentioned in this guide.
Their address is:

PO Box 29
St Crispins House
Duke Street
NORWICH
NR3 1GN
Tel: 0870 600 5522
Fax: 0870 600 5533

E-mail: customer.services@tso.co.uk
Website: <http://www.tso.co.uk>

Education Acts

Education Act 2002 ISBN: 0105432024
Education Act 1999 ISBN: 0105456969

Education Regulations

The Independent School Standards (Wales) Regulations 2003
(SI No. 3234 (W. 314) (ISBN: 0-110-090843-0)

The Independent Schools (Provision of Information) (Wales) Regulations 2003
(SI No. 3230 (W. 310) (ISBN: 0-110-90845-7)

The Independent Schools (Publication of Inspection Reports) (Wales) Regulations 2003
(SI No. 3232 (W. 312) (ISBN: 0-110-90831-7)

The Independent Schools (Religious Character of Schools) (Designation
Procedure) (Wales) Regulations 2003 (SI No. 3233 (W. 313) (ISBN: 0-110-90839-2)

The Education (Supply of Information) Wales Regulations 2009 (SI 2009/1350)(W126)

The Education (Prohibition from Teaching or Working with Children) Regulations 2003
(SI 2003/1184) ISBN: 0-110-45779X

The Education (School Performance Information) (Wales) Regulations 2004 (SI 2004/1025)
(W.122) ISBN:

The Education (Pupil Registration) (Wales) Regulations 2010 (SI 2010/1158)(W.187)

The Education (Special Educational Needs) Approval of Independent Schools) Regulations 1994

Welsh Government Guidance

Circular 23/03 – "Respecting Others: Anti-Bullying Guidance".

Circular 02/03 – "Criminal Records Bureau: Basic Facts for School Volunteers"

Circular 34/02 - "Child Protection: Preventing Unsuitable People from working with Children and Young Persons"

Circular 47/2006 - "Inclusion and Pupil Support"

Circular 37/98 – "The Use of Reasonable Force to Control or Restrain Pupils".

Circular 005/2008 – Safeguarding Children in Education: The Role of local authorities and governing bodies under the Education Act 2002

Circular 009/2014 – Safeguarding Children in Education: Handling Allegations of Abuse against teachers and other members of staff

Circular 37/94 – Independent Schools which Admit Pupils with Special Educational Needs

Health and Safety Related Legislation

Fire Safety: An Employer's Guide ISBN: 0113412290

Managing School Facilities Guide 6 'Fire Safety' ISBN: 0112710409

Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541)

Health and Safety at Work Act 1974

ISBN: 0105437743

Food Hygiene (Wales) Regulations 2006 (SI(2006/31)(W.5)

Related Legislation and associated publications

Children Act 1989

ISBN: 0105441899

Care Standards Act 2000

ISBN: 010541500X

The Care Homes (Wales) Regulations 2002 (SI 2002/324) (W.37)
ISBN: 0-110-904524

The Children's Homes (Wales) Regulations 2002 (SI 2002/327) (W. 40)
ISBN: 0-110-904486

National Minimum Standards for Boarding Schools
ISBN: 0 7504 3077 X

National Minimum Standards for Residential Special Schools
ISBN: 0 7504 3076 1

National Minimum Standards for Children's Homes
ISBN: 0 7504 2903 8

Equal Opportunity legislation and associated publications

Equality Act 2010

SEN

The Special Educational Needs Tribunal for Wales
Government Buildings
Spa Road East
Llandrindod Wells
Powys
LD1 5HATel: 01597 829 800

The Special Educational Needs Tribunal for Wales Regulations 2012 (2012/322 (W.53)

Education (Wales) Measure 2009

Care Standards Tribunal, Tribunals Services, Care Standards, Mowden Hall, Staindrop
Road, Darlington, DL3 9BG
Tel: 01325 392712 Email: CST@tribunals.gsi.gov.uk