

Huw Lewis AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Ann Jones AM
Chair
Children and Young People Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

13 November 2013

Dear Ann,

CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE EDUCATION (WALES) BILL

Following my appearance before the Children and Young People Committee on 24 October 2013 I agreed to provide Members with further details on the transferring of SEN pupils between local authorities, the consultation and responses received relating to Independent schools (s347), and the specific difference between s160 and s347.

I have also detailed information regarding the School Term Dates Equality Impact Assessment in order to clarify a point raised by Rebecca Evans AM.

The consultation relating to Independent schools (s347)

In September 2012, the Department for Education and Skills published a consultation on '*Reform of the registration and approval of Independent Schools in respect of special educational needs*'. The consultation took place over a six week period and ended on the 1 November 2012. The Welsh Government published a summary of consultation responses in June 2013. The consultation document and response can be accessed at:

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

All independent schools and the Welsh Independent School Council were written to as part of this consultation and invited to comment on the proposal to repeal section 347 (in view of the existing provisions under section 160 of the Education Act 2002 ("section 160")) and on proposed measures to be put in place to support this legislative change.

The Welsh Government received three responses from independent schools to this consultation. Two independent schools agreed with the proposals, whilst one disagreed. The one independent school that disagreed with the proposal provided supporting comments which highlighted that they disagreed on the basis that repealing section 347 would leave no requirement for Independent schools to be annually monitored by Estyn.

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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This is a misunderstanding of the legislative proposal, as independent schools that admit pupils with statements of SEN are annually monitored against the independent school standards made under section 157 of the Education Act 2002.

Overall, the majority of those responding to the six questions posed in the consultation were in agreement with the proposals.

An explanation as to what is required under the section 160 process compared with that of the section 347 application

All independent schools must be registered. Schools apply to be registered under section 160 of the Education Act 2002 (“section 160”). An application for registration by any school is assessed by Estyn against the Independent School Standards (“ISS”), these are standards set out in regulations¹.

As part of the registration process, a school can be registered to admit pupils with SEN regardless of whether they have a statement. Any school wishing to admit a pupil with SEN, which has not been registered to do so can apply to do so under section 162 of the Education Act 2002 (“section 162”). This is known as an application for a material change to the registration.

Independent schools that wish to admit pupils with statements of SEN must be approved by the Welsh Ministers under section 347 of the Education Act 1996 (“section 347”).

An approval under section 347 can be a general approval which means that the school is approved to admit any pupil with a statement of SEN. Regulations made under section 347² (“the approval regulations”) set out the criteria to be taken into account to approve the school.

If the school does not have general approval and a pupil with SEN wished to attend that school, the Welsh Ministers can consent to the placement.

A summary of the information requirements, the ISS and the approval regulations is at Annex A. It is the view of the Welsh Government that the registration regime and the ISS provide sufficient safeguards that there is no longer a need for the approval regime.

Individual Placements

During 2012, there were 386 pupils with a statement of SEN on roll within 34 independent schools in Wales. Of those, the Welsh Ministers provided approval for 7 pupils with statements of SEN to be placed in independent schools in Wales. Welsh Ministers also provided approval for 5 placements within English schools.

Where consent for the admission of an individual pupil to be placed in the school is sought, if the independent school is in Wales, the Welsh Government seeks advice from Estyn that the placement is suitable. Estyn’s advice is based on their assessment of the individual’s statement and its own monitoring report for that independent school. The advice from Estyn then forms the basis of the Welsh Ministers’ decision.

If the independent school is in England then Welsh Government officials make a recommendation to the Welsh Ministers following an assessment of the facts which consists of:

¹ Independent School Standards (Wales) Regulations 2003 made under section 158 of the Education Act 2002.

² Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994

- a. Assessing the independent school's criteria fits with the statement of SEN. i.e. the sex, age range, and type of SEN provision provided.
- b. Assessing the latest Ofsted report on the school against compliance with independent school standards; and
- c. Contacting the relevant local authority where the independent school is located to identify any contentious issues, i.e. child protection, etc.

We consider the local authority to be best placed to assess the SEN provision available within an independent school against the needs set out within a pupils statement of SEN, including for those pupils it is looking to place in an English school.

Monitoring

If a school has general approval under section 347 the Welsh Government has an agreement with Estyn that they will undertake an annual monitoring visit. However where individual consent under section 347 has been given to allow the placement of a pupil, no annual monitoring takes place.

Education (Wales) Bill

In addition to repealing section 347, the Education (Wales) Bill seeks to reform the way that independent schools register to admit pupils with SEN. The Bill will amend section 160 to strengthen the registration regime of independent schools by changing the way in which independent schools register to admit learners with statements of SEN.

Schools who register to admit pupils with statements of SEN, must also indicate what type and level of SEN provision they are able to cater for. Those schools will be subject to regular monitoring visits by Estyn. The summary of the monitoring report will be published on Estyn's website so that it is available to those interested in placing pupils at the school.

If a pupil is admitted to a school that has not been registered to admit pupils with a statement of SEN, the Welsh Ministers expect that an application for a material change should be made within 6 months of that placement. If that does not happen, the Welsh Ministers can take enforcement action against the independent school if it considers that it is necessary to do so.

Overall we consider that this reform will:

- a. provide for clearer law;
- b. provide better quality information about independent schools for those placing children with statements of SEN
- c. strengthen safeguarding as more schools will be subject to monitoring visits by Estyn than would be at present.

The transferring of SEN pupils between local authorities

Provisions

The Education (Wales) Bill includes provision to give local authorities responsibility to make arrangements for the assessment of young people with learning difficulties and to secure specialist further education provision where it is necessary to meet assessed education and training needs.

These proposals will remove the current separation of responsibility for assessing and securing specialist provision from age 16 for learners with learning difficulties and/or disabilities. This will provide greater continuity between pre and post-16 education and

training and support better transition planning as those already familiar with the learners and their needs can support the assessment of needs and provision required to meet them.

The Bill also proposes the introduction of a new right of appeal to the Special Educational Needs Tribunal (SENTW) which will bring the rights of learners aged 16 to 25 more closely in line with younger learners and remove the current inequality for some learners depending on where they receive their education.

Assessment

In relation to arranging for assessment the key responsibilities are on the face of the Bill and regulations will set out the detail arising from these. In addition, a Statutory Code of Practice will guide authorities in discharging their duties. This will enable the use of language more easily understood by interested parties. A Code will also reflect best practice and be developed and adapted over time.

Local authorities will be required, in certain circumstances, to secure an assessment of the post-16 educational and training needs of a person for whom it maintains a statement of SEN. This requirement applies where a person is in their last year of compulsory schooling, or over compulsory school age, and the local authority believes that he or she wishes to undertake some form of post 16 education or training on leaving school.

In addition, there will be a discretionary power on a local authority to secure a post 16 education and training needs assessment of a person, subject to their meeting certain requirements set out in the Bill. These are that; the person must be ordinarily resident in the authority's area; either in the last year of compulsory schooling or over compulsory school age but under 25; have a learning difficulty; and be either receiving post 16 education or training or seem to wish to do so.

There are a number of regulation-making powers relating to this area. It is expected that provision made under these powers will be contained in two sets of regulations. One set of Regulations will deal with appeals (tribunal rules and period within which local authorities must comply with orders of the Tribunal, for example) and the other set of Regulations will make provision about assessment of needs and related matters including:

- what goes into the assessment of needs;
- how assessment requests are dealt with;
- time limits for assessment;
- when someone can be considered ordinarily resident in a local authority area;
- when further assessments can be carried out;
- specifying circumstances in which the local authority no longer has to make provision set out in the assessment.

These regulation making powers will allow the Welsh Ministers to set out when a learner is/is not to be treated as being ordinarily resident in a local authority area, reducing the potential for disruption to learner's education should they move from one authority to another. These powers could for instance be used to provide that the duty is to continue to apply for a specified period after a person moves out of an authority's area, and/or that the duty is to cease to apply if a person fails to co-operate in certain circumstances with provision for further assessment. Detailed guidance setting out the position regarding a learner moving from one authority to another will be addressed in the Code of Practice. It is, in any event, anticipated that once drafted, the regulations and the Code will be consulted upon.

The proposed regulations together with a statutory Code of Practice will provide both detail and also provide the level of flexibility that is needed to allow for adaptation over time, as policy develops or as circumstances affecting the detail change. It is proposed that draft regulations and a draft Code of Practice to which local authorities must have regard, will be prepared and consulted on by the end of 2014 in order to give local authorities sufficient time to prepare for transition.

School Term Dates Equality Impact Assessment

Ms. Evans queried the impact on the protected characteristic of religion and belief in the Equality Impact Assessment being recorded as all 3 possible options i.e. "positive", "negative" and "none/ negligible".

The text in the EIA explains that "*It is possible for the impact on certain Christian religious groups who wish their children to be in school during Holy Week (i.e. up to including Maundy Thursday) to vary*".

Possible impact will depend on whether or not the term dates which are set accord with these Christian groups' wishes for their "faith" schools. If dates do not accord with their wishes, it could be said to have a negative impact on these Christian groups. By contrast, if the term dates do accommodate "faith" school needs there should be no/ negligible impact on these Christian groups as their wishes have been met.

In the same way as for families who do not belong to these Christian groups, there may also be a positive impact for some faith school staff, pupils and their families as they will no longer have to find and finance additional childcare.

I trust that the information I have provided is helpful and clarifies the position on the issues above to the Committee.

Yours,



Huw Lewis AC / AM

Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Current Information requirements to support Welsh Ministers to make a decision under section 160, section 162 and section 347

<p>Section 160 of the Education Act 2002 – to be classed and operate as an independent school</p> <p>Section 162 of the Education Act 2002 – application for ‘material change’ to the original registration (in the context of admitting pupils with statements of SEN)</p>	<p>Section 347 of the Education Act 1996 – Approval to admit pupils with statements of SEN, generally</p>	<p>Section 347 of the Education Act 1996 – Specific approval for the placement of an individual with a statement of SEN</p>
<p>Section 160</p> <p>Prescribed information within an application for independent status:</p> <ul style="list-style-type: none"> 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; <p>In addition, a school must also include details of whether it admits pupils with SEN regardless of whether they have a statement.</p> <p>Establishments must also provide Welsh Ministers the following to support the application:</p> <ul style="list-style-type: none"> Plans of the school showing the layout of the premises and accommodation of all buildings. 	<p>Section 347</p> <p>Criteria that independent schools must comply with before being approved:</p> <ul style="list-style-type: none"> suitability of proprietors and staff (with particular reference to the suitability of teachers for visually and hearing impaired pupils); suitability of residential care staff when the school is a boarding school; admission of the pupils to the schools, whereby a pupil will not be admitted if: <ul style="list-style-type: none"> i. the school is unable to provide full-time appropriate education, 	<p>Section 347</p> <ul style="list-style-type: none"> a copy of a child’s statement of SEN; a recommendation for that child to be placed in a named independent school; written confirmation from the independent school that they have a place available to accept that child advice from Estyn that the placement is suitable.

Detailed curriculum policies, schemes of work (for the subjects taught) and the procedures by which pupils' work and progress will be assessed.

Copies of the school's written policy on: Bullying; Safeguarding and promoting the welfare of children who are pupils at the school; Safeguarding and promoting the health and safety of pupils on activities outside the school; and promoting good behaviour amongst pupils.

A copy of the school risk assessment.

A copy of the school complaints procedure.

All independent schools must satisfy the Welsh Government of the suitability of the proprietor, who will be subject to a check undertaken by the Disclosure and Barring Service.

Schools will be assessed by Estyn based on standards prescribed within the Independent School Standards (Wales) Regulations 2003. These include:

The quality of education provided in the school, covering in particular:-

- the curriculum, requiring schools to implement an appropriate curriculum policy, supported by plans and schemes of work, with the aim of securing an appropriate, broad and balanced education for pupils of all abilities including those with a statement of SEN without being prescriptive about what independent schools are required to teach:
- the teaching in the school;
- evaluation of pupil performance; and
- effective provision for those whom Welsh or English is an additional language.

The spiritual, moral social and cultural development of pupils at the school, which covers the broader

or

- ii. that it would be incompatible with any condition imposed by the Welsh Ministers, or
- iii. that it might not breach any maximum school admission number;

exclusions from the school are not to be unreasonable;

health and welfare of the pupils is to be provided by suitably qualified persons; to promote the welfare and safeguard boarders at a school (if relevant) and to maintain health and medical records;

substances and apparatus involving health hazards that involve a prescribed amount of radioactive material or in vacuo whereby accelerated electrons are to be used for instruction at the schools, requires a prior notification to the Welsh Ministers;

collective worship and religious education should be, as far as practicable, attended by and received by pupils;

incident and punishment books to be kept; and

standards of the premises shall conform to the standard prescribed under section 542 of the 1996 Act.

Once a school is approved, there are further requirements to be complied

Monitoring Requirements

None. There are no requirements for Estyn to monitor an independent school where Welsh Ministers have given specific approval for the placement of an individual with a statement of SEN.

development of pupils and sets out some principles which the school should seek to promote.

Welfare, health and safety of pupils, covering in particular:

- the requirement to have bullying, safeguarding, health and safety, behaviour, and first aid policies;
- the extra standards which apply when a school provides accommodation or boarding;
- levels of fire safety;
- proper supervision of pupils;
- keeping records of sanctions imposed for disciplinary offences; and
- maintaining admissions and attendance records.

The suitability of staff, supply staff and proprietors, covering in particular:

- the checks which must be carried out in relation to staff employed at the school, including Disclosure and Barring Service checks, overseas conduct investigations, right to work in the UK and other suitability indicators;

Premises of and boarding accommodation at the school;

The provision of information by the school, covering in particular:-

- information, the availability of which is to be notified to parents and prospective parents, copies of which are to be provided on request;
- parents' rights to be informed of the results of the findings of inspections of the school;
- the information which must be provided to any inspectorate inspecting the school;
- annual reports to parents in connection with each individual pupil setting out progress and attainment;
- accounts to be provided to local authorities where local authorities wholly or partly fund pupils at the school;
- information required by any local authority for the purposes of reviewing any SEN pupil's statement of

with. These include:

- appropriate education provision;
- changes in the control of the school should be notified to the Welsh Minister;
- notification of substantial alteration to the premises to the Welsh Minister;
- requesting advice from the fire and rescue authority;
- misconduct reports in respect of dismissed (or who would have been dismissed) employees to the Welsh Minister and relevant local authorities;
- application of provision relating to school year and day and leave of absence;
- provision of written reports on children with statements to a local authority;
- provision of information to the appropriate person in respect of a child with SEN when a child leaves the school to go to another school or institution;
- report any death, illness or injury to prescribed people;
- grant the local authority and parents access to the school and boarders;
- and
- publish a prospectus to contain prescribed information.

SEN; and

- the provision to the Welsh Ministers of a fire safety risk assessment.

The manner in which complaints are handled by the school.

Independent schools may also apply to Welsh Ministers under the existing provision of section 162, for “material changes” to its original registration, i.e. an independent school could apply to broaden its range of SEN provision under s162.

Section 162

Section 162 of the Education Act 2002 requires that all independent schools must gain approval before implementing certain specified changes. In the context of admitting pupils with statements of SEN, the schools will need to provide within its application:

Any proposal to admit pupils with special educational needs:-

- Details of the numbers and age range of proposed pupils, together with information about the types of SEN to be catered for. Also curriculum details, schemes of work and where alterations have been made to the school premises, the school plans.

Monitoring Requirements

After 3 months of operation, following initial registration, Estyn will visit the independent school to confirm that it continues to meet the standards for registration once pupils have been admitted and the school is operational.

Independent schools are then inspected routinely by Estyn

Monitoring Requirements

Where an independent school has been approved (under section 347) to admit pupils with statements of SEN generally, Welsh Ministers have an agreement with Estyn to annually monitor those schools.

This annual monitoring visit will review the SEN provision against the Independent School Standards. *This annual monitoring visit is the same as that conducted under section 160 where an independent school is registered to admit pupils with SEN regardless of whether they have a statement.*

<p>against the Independent School Standards (Wales) Regulations 2003,. These inspections take place at least every six years, however inspections will be more frequent where a school is giving cause for concern.</p> <p>Where an independent school is registered (under section 160 or following approval for a material change to its registration under section 162) to admit pupils with SEN regardless of whether they have a statement, it will be subject to an annual monitoring visit by Estyn. This annual monitoring visit will review the SEN provision against the Independent School Standards.</p>		
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