



BRIEFING PAPER

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Constituency casework: schools in Wales

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Summary

Members often receive enquiries from constituents about school-related matters. Many of these can be answered from readily available information on the internet or in standard publications. Where complex issues are raised it may be more appropriate to refer the constituent to specialist bodies and organisations or to a solicitor if legal advice is sought.

This note gives a brief overview of the structure of the state-maintained school system in Wales, including an outline of the different categories of schools, as often an answer to a school-related constituency question may depend upon the type of school in question. The note provides background and key sources on a selection of issues that are typically raised with Members by constituents. Members who have questions on topics not covered here may contact the Social Policy Section for information.

The various guidance documents referred to in this briefing are current at the time of writing; however, some sources are updated regularly or from time to time so it is advisable to check the relevant websites.

This note relates to Wales only. Education is a devolved area and information on school-related issues is available on the websites of the [Department for Education](#), [Scottish Government](#), and the [Northern Ireland Department of Education](#).

There are also Library briefings:

- [Constituency casework: schools in England](#), SN 05396
- [Constituency casework: schools in Scotland](#), CBP 07819
- [The School System in Northern Ireland](#), CBP 8024

1. Brief overview of the school system

1.1 Types of school

State-funded schools in Wales are maintained by local authorities. The main categories of maintained schools are:

- **Community schools** – The local authority employs the school’s staff, owns the school’s land and buildings and is the admissions authority. Community special schools are the special school equivalent of mainstream community schools, catering wholly or mainly for children with special educational needs.
- **Foundation schools** – the governing body is both the employer and the admissions authority. The school’s land and buildings are either owned by the governing body or by a charitable foundation. There are also foundation special schools, which are the special school equivalent of the mainstream foundation school, catering wholly or mainly for children with special educational needs.
- **Voluntary-aided schools** – the governing body is the employer and the admissions authority. The school’s land and buildings (apart from playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation. The governing body contributes to the capital costs of establishing the school and subsequent capital building work.
- **Voluntary-controlled schools** – the local authority is the employer and the admissions authority. The school’s land and buildings (apart from the playing fields which are normally vested in the local authority) will normally be owned by a charitable foundation.

Foundation, voluntary-aided and voluntary-controlled schools may be designated by the Welsh Ministers as having a **religious character**. Such schools, often referred to as ‘faith schools’ provide denominational collective worship, and have distinct rules, such as greater control over admissions.

Outside of the state-funded system, **independent schools** in Wales are funded largely through fees paid by parents. Independent schools do not have to follow the national curriculum and are largely in charge of their own affairs, although they are subject to inspection by [Estyn](#), the school inspectorate for Wales.

1.2 National Curriculum

All local authority maintained schools and education settings in Wales are required to teach the National Curriculum. The curriculum is divided into the following stages:

- Foundation stage (ages 3-7)
- Key Stages 2-4 (ages 7-16)

The curriculum requirements are set out by the Welsh Government in a series of [curriculum documents](#).

Reform

A [new curriculum](#) for Welsh schools has been developed following the [Donaldson Review](#).

The new curriculum is intended to be introduced in September 2022, subject to a planned *Curriculum and Assessment Bill* passing through the Senedd. The Welsh Government has published a range of [information on the planned curriculum](#), to help schools prepare for its implementation.

2. School organisation

Section 14 of the *Education Act 1996* requires that local authorities must ensure that there are sufficient schools providing primary and secondary education for their area. Schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.¹

The [School Organisation Code](#) is the key document that sets out the requirements and provides practical guidelines in respect of school organisation proposals. The second edition of the Code came in to force on 1 November 2018.

It is required to submit proposals to open or close a school, and also to change a school's category.

The following information on issues that must be considered is not exhaustive, but provides an indication of the approach taken.

Box 1: Relevant bodies

Section 38 of the *School Standards and Organisation (Wales) Act 2013* requires the Welsh Ministers to issue a Code that may impose requirements and include guidelines in respect of school organisation on the following (known collectively in this Code as "relevant bodies"):

- the Welsh Ministers;
- local authorities;
- the governing bodies of maintained schools; and
- the promoters of proposals to establish voluntary schools.²

A [Quick Guide](#) from the Welsh Assembly research service provides further information on the legal requirements on local authorities and other bodies proposing changes to the configuration of schools (such as closures or amalgamations) and the procedures which must be followed.

Closing a school

Where a school closure, or reduction in a school's capacity or age range is proposed, relevant bodies should have regard to:

- whether the establishment of multi-site schools might be considered as a means of retaining buildings, or the reasons for not pursuing this option
- whether alternatives to closure, such as clustering, collaboration or federation with other schools, might be considered (taking account of the scope for use of ICT links between school sites) or the reasons for not pursuing these as an alternative
- whether the possibility of making fuller use of the existing buildings as a community or educational resource could be explored; (Local authorities should consider whether it would be

¹ Welsh Government, [School Organisation Code](#), p6

² *Ibid.*, p3

feasible and economical to co-locate local services within the school to offset the costs of maintaining the school)

- the overall effect of closure on the local community (including the loss of school based facilities which are used by the local community; and
- how parents' and pupils' engagement with the alternative school and any facilities it may offer could be supported (e.g. how pupils; particularly any less advantaged pupils) will be helped to participate in after school activities)
- Whether other provision will provide sufficient school places locally
- Whether sufficient Welsh language and, where relevant, faith provision will be retained
- The impact on journey times for pupils, including those with special educational needs, travelling to school³

A more detailed set of requirements is in place if there is a proposal to close a rural school.⁴

Opening a school

Where it is proposed to open a new school, or to increase a school's capacity or age range, relevant bodies should have regard to:

- that there is evidence of current or future need/demand in the area for additional places, with reference to the school or proposed school's language category, designated religious character, and the gender intake (i.e. co-educational/single sex);
The demand for additional provision of any type in an area should be assessed and evidenced. (In the case of Welsh medium provision this would include an assessment of the demand for Welsh Medium education conducted in accordance with any regulations made under section 86 of the 2013 Act).
- whether proposals will improve access for disabled pupils in accordance with requirements under the Equality Act 2010.⁵

Changes to school category

It is possible in many cases for state-funded schools to change their category. For instance, community schools may become voluntary aided or voluntary controlled schools. However, schools are not permitted to change their category to foundation.

The [Code](#) notes that restrictions may apply where potential changes wish to be made to a school's faith designation:

It is not possible for voluntary aided, voluntary controlled or foundation schools with a designated religious character to become a community school through a change of category

³ Ibid., p8-9

⁴ Ibid., p11-14

⁵ Ibid., p8

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proposal. Similarly community schools cannot become voluntary schools with a designated religious character.⁶

⁶ Ibid., p19

3. Teaching in Welsh

While a majority of schools in Wales teach predominantly in English, a significant number attend schools that are Welsh-medium, bilingual, or have significant Welsh language provision as part of their teaching.

The research service at the National Assembly for Wales [sets out that](#) it is the Welsh Government's policy that all pupils should study Welsh from ages 3-16, either first or second language, and that more than a quarter of Welsh pupils are in fully or partially Welsh language education:

Approximately 16% of pupils attend Welsh-medium schools and study Welsh as a first language. A further 10% attend bilingual, dual-medium, or English with significant Welsh provision (see further details on school language categories later in the paper). Welsh Government statistics show that in 2014, 22.2% of 7 year old learners were assessed through the medium of Welsh first language and 17.1% of 14 year olds were assessed in Welsh first language.⁷

The Welsh Government has also published a [Welsh in education: action plan 2017 to 2021](#), to set out the direction for the development of compulsory Welsh-medium and Welsh language education during that period. A [FAQs document](#) sets out some key aspects of the plan.

Curriculum reform

[A new curriculum](#) is planned to be introduced in Wales from September 2022. Welsh is a mandatory part of the planned curriculum.

Part of the proposals is that, for learners up to age 7:

- the headteacher will have the discretion to decide that English does not form part of the school's curriculum in order to enable learners to gain fluency in Welsh
- all schools must set out in their published summary of their curriculum their approach to teaching English and Welsh up to age 7⁸

⁷ National Assembly for Wales Research Service, [Welsh-medium education and Welsh as a subject](#), August 2016, p1

⁸ Welsh Government, [Curriculum for Wales: summary of proposed legislation](#), 28 January 2020

4. School admissions

4.1 Overview

Admissions to state-funded schools are handled slightly differently according to the type of school concerned.

To apply to community schools (Welsh medium or English medium) or voluntary controlled schools, parents must contact their local authority, who will provide relevant information and forms. For voluntary aided or foundation schools, parents must normally contact the school directly, but should check arrangements with the relevant local authority.⁹ Parents are not obliged to also apply for a community school, although they may apply to multiple admission authorities.

All maintained schools, including faith schools, must offer a place to applicants, unless the school is oversubscribed. Admissions authorities must have clear, published criteria on how places will be allocated when their school is oversubscribed.

Authorities are largely free to set oversubscription criteria – for example catchment areas, or preference for children of a school's faith – as they believe appropriate. However, certain criteria are forbidden, such as selection by ability or aptitude, discriminating against children with special educational needs, or prioritising children whose parents might contribute to the school financially. A full list of criteria that must not be used is available on page 12 of the [School Admissions Code](#).

4.2 Appeals

Parents who are unhappy with the school place awarded to their child may appeal to an independent appeals panel.

If an appeal is unsuccessful, parents may refer the matter to the Public Services Ombudsman, but the Ombudsman will only assess potential maladministration on the part of the panel, rather than simply a disagreement about the decision. Further appeals for the same school in the same year are unlikely to be permitted, except for a significant change in circumstances.

Detailed rules on the appeals process are provided in the [School Admissions Appeals Code](#).

4.3 Deferred entry

The Welsh Government's [School Admissions Code](#) makes allowances for children to be admitted to school outside of their normal age group. It notes that requests for admission outside the normal year group may be considered in particular cases, such as exceptional ability or ill health:

3.30 Although most children will be admitted to a school with their own chronological age group, from time to time parents seek places outside their normal age group for gifted and talented

⁹ Welsh Government, [Frequently Asked Questions on school admissions and admission appeals](#)

children, or those who have experienced problems or missed part of a year, often due to ill health. While it would not normally be appropriate for a child to be placed in a year group that is not concurrent with their chronological age, admission authorities should consider these requests carefully and make decisions on the basis of the circumstances of each case and in consultation with the parents and the school, and specifically in relation to what is most beneficial to the child. Due regard should also be given to the Educational Psychologist's report where available, and clear reasons ascertainable for such a decision to be made.

3.31 If it is decided that there are grounds to consider an 'out of year' application, parents refused an application for a place at a school have a statutory right of appeal. However, there is no right of appeal if a place has been offered but not in the desired year group.¹⁰

The Government's FAQs page on school admissions issues includes the following overview:

Q 23. When does my child have to start full-time school?

By law children have to be in school full-time in the term after they are five. Before that time you can ask the admission authority if your child can go to school part-time or put off starting school until later in the school year. This is known as deferred entry. Your child will have to go to school before the end of the summer term or they will lose their place in the class and you will have to reapply for a place. If you do not take up the place offered in the same school year, your child would not normally join the next Reception class but would join the class in which they were originally offered a place.¹¹

¹⁰ Welsh Government, [School Admissions Code](#), July 2013, p24

¹¹ Welsh Government, [Frequently Asked Questions on School Admissions and School Admission Appeals](#),

5. School transport

The Welsh Government has published statutory [Learner Travel guidance](#) that sets out the duties of local authorities relating to school transport. The *Learner Travel (Wales) Measure 2008* provides the principle legislative basis for the rules. [A parents' guide](#) to the law is also provided.

The guidance sets out that local authorities **must**:

- Assess the travel needs of learners in their authority area
- Provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school
- Provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school
- Assess and meet the needs of “looked after” children in their authority area
- Promote access to Welsh medium education
- Promote sustainable modes of travel¹²

There are several other requirements on authorities, for instance that they must have regard to the needs of disabled learners and learners with learning difficulties. Local authorities may also provide discretionary support. The [guidance](#) provides full information.

Local authorities are also required to publish a variety of information:

- their general policy on providing free transport
- the general policy on any travel arrangements made for learners for whom free transport is not provided
- the circumstances that payment of reasonable travelling expenses will be made
- arrangements and policies in relation to learners with learning difficulties/disabilities
- information on how to make enquiries/complaints about travel arrangements, and any local authority appeals procedure
- any other information that the local authority considers would be useful for learners in its area about travel arrangements made by other organisations.¹³

The National Assembly for Wales' research service has produced [Home to school transport - a guide for constituents](#), which provides a fuller guide.

¹² Welsh Government, [Learner Travel Statutory Provision and Operational Guidance](#), June 2014, p3

¹³ *Ibid.*, p43

6. School attendance

6.1 General issues

Parents are, under section 7 of the *Education Act 1996*, responsible for ensuring that their children of compulsory school age receive a suitable education. Most often this takes place at school, however parents may home educate their children if they wish. All education must be full-time and suitable to a child's age, ability and aptitude, and to any special educational needs that they may have. Welsh Government Guidance has been published on [elective home education](#).

Local authorities have a duty to ensure that children in their area are receiving a suitable education either by regular attendance at school or otherwise.

Schools are required under the *Education (Pupil Registration) (Wales) Regulations 2010* to take an attendance register twice a day; at the start of the morning session and once during the afternoon session.

Where a parent fails to prove that a child is receiving a suitable education, School Attendance Orders may be used to require a child to be enrolled in a particular school. Further legal measures, including prosecution, may be pursued if a parent fails to ensure that their child is receiving a suitable education

The [All Wales Attendance Framework](#) provides more detail on school attendance measures.

6.2 Holidays during term time

The *Education (Pupil Registration) (Wales) Regulations 2010* give schools discretion to grant leave for the purpose of an annual family holiday during term time. Only in exceptional circumstances would more than ten days holiday leave be authorised over a twelve month period. Absences must be agreed in advance by the school.

Penalty fines may be brought against parents for unauthorised absences from school, under the *Education (Penalty Notices) (Wales) Regulations 2013*. Local authorities must have their own codes of conduct for administering penalty fines. Fine may be £60 if paid within 28 days, or £120 if paid within 42 days.

Information is provided in the [All Wales Attendance Framework](#) and also on the [Welsh Government website](#).

7. School exclusion

Responsibility for school exclusions lies with head teachers. [Guidance from the Welsh Government](#) makes clear that permanent exclusion will normally be the end of a lengthy disciplinary process where other strategies have proved inadequate, but that certain one-off offences could prompt a permanent exclusion, such as

- serious actual or threatened violence against another learner or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- use or threatened use of an offensive weapon.

The Guidance also makes clear that exclusions must be formal, and follow the established procedures set out in the Guidance, or risk being unlawful.

Appeals

After a decision to permanently exclude a pupil is upheld by a school's disciplinary committee, the parent/carer and/or the learner must be sent a letter from the committee setting out the reasons for the decision, as well as how and when to appeal. The local authority should also write to the parent/carer and/or learner within three working days, indicating the latest date by which an appeal may be lodged. This will be 15 school days from the date of the discipline committee's decision.

An independent appeal panel must meet to consider the appeal no later than the fifteenth school day after the appeal was lodged.

Independent appeal panels are made up of three or five members: a lay chair in all cases, with one or two education practitioners, and one or two school governors, depending on whether it is a three or five-member panel.

Panels cannot revisit their decisions after they are made. Further appeals may however be made to the Public Services Ombudsman for Wales or to Welsh Ministers. Judicial review may also be possible.

8. Special Educational Needs (SEN)/Additional Learning Needs (ALN)

8.1 Current system

Local authorities in Wales are required by section 312 of the *Education Act 1996* to make provision for children with learning difficulties.

The [Special Educational Needs Code of Practice for Wales](#) sets out that by law children have special educational needs if they have a learning difficulty which calls for special educational provision to be made for them. Children have a learning difficulty if they:

- (a) have a significantly greater difficulty in learning than the majority of children of the same age; or
- (b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority
- (c) are under compulsory school age and fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them.¹⁴

Day-to-day, provision for pupils with special educational needs is a matter for the school as a whole, in both mainstream and special education, with responsibilities falling on governors, head teachers, teachers and other staff.¹⁵

The nature of the support children with SEN may receive will vary widely according to their different needs.

- School Action – particular interventions from a teacher to provide additional or different support to a pupil
- School Action Plus – support, usually provided by schools, following advice from external, specialist bodies where School Action is not sufficiently meeting a child's needs

Where school-based support is not sufficient to meet a child's needs, an assessed statutory statement of needs may be provided. Assessments may be requested by parents, education settings and other agencies.¹⁶

Where a child receives a statement, parents may request they be placed in a particular school. Local authorities must comply with their preference unless the school is unsuitable to the child's age, ability, aptitude or SEN, or the placement would be incompatible with the efficient education of the other children with whom the child would be educated, or with the efficient use of resources.¹⁷

¹⁴ S312(2) *Education Act 1996*, Welsh Government, [Special Educational Needs Code of Practice for Wales](#), p1

¹⁵ Welsh Government, [Special Educational Needs Code of Practice for Wales](#), p12-13

¹⁶ *Ibid.*, p74

¹⁷ *Ibid.*, p105

The detailed [Special Educational Needs Code of Practice for Wales](#) provides full information on the system in place, including how to appeal a decision.

8.2 ALN reforms: from September 2021

The Welsh Government is undertaking significant reforms of the existing SEN system, to create a unified system for supporting learners from 0 to 25 with additional learning needs (ALN).

The [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#) became law on 24 January 2018. The Act provides the framework for a new statutory support ALN system for children and young people aged 0 to 25 in Wales, which is due to come into force in September 2020.

The Welsh Government's [FAQs paper on the ALN system](#) states that the aim of the reforms is to create:

- a unified legislative framework to support all children of compulsory school age or below with additional learning needs (ALN) and to support young people with ALN who are in school or further education (FE);
- an integrated, collaborative process of assessment, planning and monitoring of the support provided to ALN learners which facilitates early, timely and effective interventions; and
- a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

The ALN system will extend rights to statutory plans to all learners with ALN, not limited to only those with the most severe or complex needs.

A [consultation on a draft additional learning needs code](#) ran from December 2018 to March 2019. The Welsh Government published a [summary of responses](#) in June 2019.

Kirsty Williams, the Minister for Education, announced in a [written statement to the Welsh Assembly](#) in September 2019 that the Code and regulations would be laid for National Assembly approval in 2020.

The new ALN system is intended to be implemented over a phased period beginning in September 2021.

9. Complaints about schools

Governing bodies of maintained schools in Wales are required by s29 of the *Education Act 2002* to develop complaints procedures for dealing with complaints from parents, pupils, members of staff, governors, members of the local community and others. These policies must be published.

The Welsh Government has produced guidance on [Complaints procedures for school governing bodies in Wales](#), which provides a three stage model for schools in producing their procedures. The three suggested stages are:

- Raise concerns with a teacher or designated person in the school;
- If the issue is not resolved, take the matter to the head teacher if it is not resolved, who will meet with you;
- If the issue is still not resolved, write to the chair of governors.

The Guidance makes clear that this process should be amended in particular circumstances, for instance if the complaint is about the head teacher or the chair of governors.

The guidance further states:

3.26 It is not recommended that governing bodies have an appeals committee that a complainant could go to... Should there be evidence that a complaint has not been considered properly at [governing body level] and therefore that standards of governance are not good enough, then a local authority may consider using its powers of intervention. This power provides sufficient safeguard against bad practice in schools.¹⁸

¹⁸ Welsh Government, [Complaints procedures for school governing bodies in Wales, October 2012](#), p17-18

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