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WELSH STATUTORY INSTRUMENTS

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**2024 No. 26 (W. 9)**

**EDUCATION, WALES**

**The Independent Schools (Provision of Information) (Wales) Regulations 2024**

<i>Made</i>	- - - -	<i>11 January 2024</i>
<i>Laid before Senedd Cymru</i>		<i>15 January 2024</i>
<i>Coming into force</i>	- -	<i>14 February 2024</i>

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 157(1), 160(1), 168 and 210(7)(c) of the Education Act 2002(1), and now exercisable by them(2) make the following Regulations.

**PART 1**

**GENERAL**

**Title, coming into force and application**

1.—(1) The title of these Regulations is the Independent Schools (Provision of Information) (Wales) Regulations 2024, and they come into force on 14 February 2024.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(3);

“the 1997 Act” (“*Deddf 1997*”) means the Police Act 1997(4);

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;

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- (1) 2002 c. 32. Section 168(2)(a) was substituted by regulation 18 of the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195) (W. 44). Section 210(7)(c) was amended by section 21(1) and (3)(c)(ii) of the Learner Travel (Wales) Measure 2008 (nawm 2). See section 212(1) for the definition of “regulations” and “prescribed”.
- (2) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- (3) 1996 c. 56.
- (4) 1997 c. 50.

“the 2006 Act” (“*Deddf 2006*”) means the Safeguarding Vulnerable Groups Act 2006**(5)**;

“the 2018 Act” (“*Deddf 2018*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018**(6)**;

“the 2003 Regulations” (“*Rheoliadau 2003*”) means the Independent Schools (Provision of Information) (Wales) Regulations 2003**(7)**;

“additional learning needs” (“*anghenion dysgu ychwanegol*”) has the meaning given in section 2 of the 2018 Act;

“additional learning provision” (“*darpariaeth ddysgu ychwanegol*”) has the meaning given in section 3 of the 2018 Act;

“application” (“*cais*”) means an application to the registration authority for the registration of an independent school made by the proprietor pursuant to section 160(1)(b) of the 2002 Act;

“DBS certificate” (“*tystysgrif GDG*”) means an enhanced criminal record certificate issued under section 113B(1)**(8)** of the 1997 Act, which includes, in such cases as are from time to time prescribed under section 113BA(1) of that Act, suitability information relating to children;

“DBS up-date service” (“*gwasanaeth diweddarau’r GDG*”) means the service operated by the Disclosure and Barring Service that provides relevant “up-date information” within the meaning given in section 116A(8)(b)(i)**(9)** or 116A(8)(c)(i) of the 1997 Act;

“independent school” (“*ysgol annibynnol*”) has the meaning given in section 463 of the 1996 Act**(10)**;

“individual development plan” (“*cynllun datblygu unigol*”) has the meaning given in section 10 of the 2018 Act;

“local authority” (“*awdurdod lleol*”) has the meaning given in section 579(1) of the 1996 Act**(11)**;

“looked after by a local authority” (“*sy’n derbyn gofal gan awdurdod lleol*”) has the meaning given in section 74(1) of the Social Services and Well-being (Wales) Act 2014**(12)** or, as the case may be section 22(1) of the Children Act 1989**(13)**;

“proprietor” (“*perchennog*”) has the meaning given in section 579(1)**(14)** of the 1996 Act;

“pupil” (“*disgybl*”) has the meaning given in section 3(1) of the 1996 Act**(15)**;

“the register” (“*y gofrestr*”) means the register of independent schools kept by the registration authority under section 158(3)**(16)** of the 2002 Act;

“registered independent school” (“*ysgol annibynnol gofrestredig*”) means an independent school whose name is entered in the register;

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**(5)** 2006 c. 47.

**(6)** 2018 anaw 2.

**(7)** S.I. 2003/3230 (W. 310).

**(8)** Section 113B was inserted into the Police Act 1997 (c. 50) by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15). Section 113B(1) was amended by articles 36 and 37(c) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006), sections 97(2), 112(2) of and Part 8 of Schedule 8 to the Policing and Crime Act 2009 (c. 26) and section 80(1) of the Protection of Freedoms Act 2012 (c. 9).

**(9)** Section 116A was inserted by section 83 of the Protection of Freedoms Act 2012 (c. 9) and amended by articles 36 and 37(g) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006).

**(10)** Section 463 was substituted by section 172 of the Education Act 2002 (c. 32). Subsection (1) was amended by section 26 of and paragraph 4 of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2) and by S.I. 2010/1158 and S.I. 2016/463 (W. 131). There are other amending instruments but none is relevant to these Regulations.

**(11)** Definition of “local authority” was substituted by article 3(1) and (2)(b) of S.I. 2010/1158.

**(12)** 2014 anaw 4.

**(13)** 1989 c. 41. Section 22(1) was amended by regulations 55 and 69(a) of S.I. 2016/413 (W. 131).

**(14)** Definition of “proprietor” was amended by section 140(1) of and paragraph 183(a)(iii) of Schedule 30 to the School Standards and Framework Act 1998 (c. 31). There are other amending instruments not relevant to these Regulations.

**(15)** Section 3(1) was amended by section 57(1) of and paragraph 9 of Schedule 7 to the Education Act 1997 (c. 44).

**(16)** Section 158(3) was amended by section 169(1) of and Schedule 1, paragraphs 13 and 17(b) to the Education and Skills Act 2008 (c. 25).

“school year” (“*blwyddyn ysgol*”) has the meaning given in section 579(1) of the 1996 Act<sup>(17)</sup>;

“special educational needs” (“*anghenion addysgol arbennig*”) has the meaning given in section 312 of the 1996 Act;

“special educational provision” (“*darpariaeth addysgol arbennig*”) has the meaning given in section 312 of the 1996 Act.

(2) Any reference in these Regulations to a person employed at an independent school is a reference to a person—

- (a) providing education at an independent school;
- (b) taking part in the management of an independent school, or
- (c) carrying on work which—
  - (i) brings that person regularly into contact with children who are pupils at the independent school, and
  - (ii) is carried out at the request of or with the consent of the proprietor of an independent school (whether or not under a contract).

(3) For the purposes of paragraph 23(d) of the Schedule, a DBS certificate or DBS up-date service check is only relevant where an individual is or will be engaging in—

- (a) regulated activity within the meaning of Part 1 of Schedule 4 to the 2006 Act, or
- (b) regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the 2006 Act as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012.

### **Application for registration of an independent school**

3. Every application must—

- (a) be in the form of an online application which is accessed from the pages of the website maintained by the Welsh Government which have been established for the purpose of notifying applicants about the procedure for registration under section 158(1) and (3) of the 2002 Act,
- (b) state the first date on which the proprietor intends the independent school to admit pupils,
- (c) contain the information specified in Part 2 of the Schedule, and
- (d) contain a certificate signed by the proprietor or by a person authorised by the proprietor to give the certificate on the proprietor’s behalf that, to the best of their knowledge and belief, the statements made in the application are accurate.

### **Initial return**

4.—(1) If requested to do so by the registration authority, the proprietor of a registered independent school must provide the registration authority with an initial return for the independent school.

(2) Each initial return must—

- (a) be in the form of an online application which is accessed from the pages of the website maintained by the Welsh Government which have been established for this purpose,
- (b) be made up to the date specified by the registration authority,
- (c) contain the information specified in Part 3 of the Schedule, and

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<sup>(17)</sup> Definition of “school year” was inserted by section 57(1) of and paragraph 43 of Schedule 7 to the Education Act 1997 (c. 44).

- (d) contain a certificate signed by the proprietor or by a person authorised by the proprietor to give the certificate on the proprietor's behalf that, to the best of their knowledge and belief, the statements made in the initial return are accurate.
- (3) An initial return must be provided within the period of 90 days beginning with—
  - (a) the admission date, or
  - (b) where the registration authority's request for the initial return is made after the admission date, the date of the request.
- (4) The "admission date" is the first date on which—
  - (a) five or more pupils are admitted to the school, if the school is an independent school by virtue of section 463(1)(a) of the 1996 Act, or
  - (b) one pupil is admitted to the school, if the school is an independent school by virtue of section 463(1)(b) of that Act.

### **Annual return**

**5.—(1)** In every school year the proprietor of a registered independent school must deliver to the registration authority an annual return for that independent school within 30 days of being requested to do so by the registration authority.

- (2) Each annual return must—
  - (a) be in the form of an online application which is accessed from the pages of the website maintained by the Welsh Government which have been established for this purpose,
  - (b) be made up to the date specified by the registration authority,
  - (c) contain the information specified in Part 4 of the Schedule, and
  - (d) contain a certificate signed by the proprietor or by a person authorised by the proprietor to give the certificate on the proprietor's behalf that, to the best of their knowledge and belief, the statements made in the annual return are accurate.

### **Removal of an independent school from the register**

**6.** If the registration authority is satisfied that the proprietor of an independent school has failed to comply with any requirement specified in regulation 4 or 5, it may remove the independent school from the register.

### **Offence**

**7.** If the proprietor of an independent school fails to comply with any requirement specified in regulation 4 or 5 they are guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Revocations**

- 8.** The Independent Schools (Provision of Information) (Wales) Regulations 2003 are revoked.
- 9.** The Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007(**18**) are revoked.
- 10.** The Independent Schools (Provision of Information) (Wales) (Amendment) Regulations 2021(**19**) are revoked.

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(18) S.I. 2007/947 (W. 81).

(19) S.I. 2021/217 (W. 54).

### **Consequential Amendments**

11. The Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009<sup>(20)</sup> are amended as follows—

- (a) omit regulation 4;
- (b) omit regulation 5.

### **Transitional Provision**

12. Where before the coming into force of these Regulations—

- (a) a proprietor is required to deliver a return under regulation 4 of the 2003 Regulations, or
- (b) an annual return is requested by the registration authority under regulation 5 of the 2003 Regulations,

the 2003 Regulations continue to have effect in relation to that return, any decision of the registration authority to remove from the register the independent school in relation to which the return has been made and any appeal against that decision.

11 January 2024

*Jeremy Miles*  
Minister for Education and Welsh Language, one  
of the Welsh Ministers

## SCHEDULE

Regulations 3, 4 and 5

## PART 1

## INTRODUCTION

## 1. In this Schedule—

“boarding accommodation” (“*llety byrddio*”) means overnight accommodation arranged or provided by an independent school at the school premises or elsewhere, but excluding accommodation for pupils being accommodated away from the school premises during a school trip;

“charity” (“*elusen*”) has the meaning given in section 1(1) of the Charities Act 2011<sup>(21)</sup>;

“organisation” (“*sefydliad*”) includes a partnership, a body corporate and an unincorporated body;

“premises” (“*mangre*”) has the meaning given in section 579(1) of the 1996 Act;

“year group” (“*grŵp blwyddyn*”) means—

- (a) in relation to an initial return, a group of pupils attending an independent school who attain the same age in years during the period of 12 months beginning with 1 September in the school year in relation to which the return is made, and
- (b) in relation to an annual return, a group of pupils attending an independent school who attain the same age in years during the period of 12 months beginning with 1 September immediately before the date to which the annual return is made up.

## PART 2

## INFORMATION REQUIRED IN AN APPLICATION

## 2. Where the proprietor is an individual—

- (a) the individual’s full name and any previous names by which they have been known;
- (b) the individual’s usual residential address, telephone number, email address, date of birth and National Insurance number;
- (c) details of the individual’s employment history, including—
  - (i) a full employment history, together with a satisfactory written explanation of any gaps in employment;
  - (ii) where any previous employment or position has involved work with children, so far as reasonably practicable verification of the reason why the employment or position ended;
  - (iii) the name and address of any present employer and, where relevant, of any previous employers;
- (d) details of any business that the individual carries on or has carried on;
- (e) the name and address of two referees—
  - (i) who are not relatives of the individual;
  - (ii) each of whom is able to provide a reference as to the individual’s competence to act as proprietor of an independent school, and

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(21) 2011 c. 25.

- (iii) where possible, one of whom is the individual's most recent employer.
3. Where the proprietor is a body corporate—
- (a) its name;
  - (b) the address of its registered office;
  - (c) if different from the address of the registered office or if there is no registered office, the address of its principal office;
  - (d) its email address and telephone number;
  - (e) if it is a company, the company number;
  - (f) if it is a charity, the charity number;
  - (g) where it is a company and is a subsidiary of a holding company—
    - (i) the name and address of the registered office of the holding company;
    - (ii) the email address and telephone number of the holding company;
    - (iii) the company number of the holding company;
    - (iv) if the holding company is a charity, the charity number of the holding company;
    - (v) the name and address of any other subsidiary of the holding company;
    - (vi) the email address and telephone number of any other subsidiary of the holding company;
    - (vii) the company number of any other subsidiary of the holding company;
    - (viii) if the subsidiary is a charity, the charity number of any subsidiary of the holding company.
4. Where the proprietor is a partnership—
- (a) the name of the partnership;
  - (b) the address of the principal office of the partnership;
  - (c) the email address and telephone number of the partnership.
5. Where the proprietor is an unincorporated body—
- (a) its name;
  - (b) the address of its principal office;
  - (c) its email address and telephone number.
6. In all cases where the proprietor is an organisation—
- (a) details about its governance arrangements, including details of any delegations of responsibilities of the organisation;
  - (b) for each member of the organisation, including the chair, the details required under paragraph 2 except where the proprietor is a company limited by shares (within the meaning of the Companies Act 2006(22)), a person is not to be treated as a member of the organisation unless they hold at least 5% of the company's share capital.
7. The name and address of the independent school, its email address and telephone number.
8. Where the independent school has a governing body, the full name, usual residential address, telephone number and email address of the Chairperson of that body.
- 9.—(1) The proposed age range of pupils.

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- (2) The proposed maximum number of pupils.
- (3) Whether the independent school will be for male pupils, female pupils or for both.
- (4) Whether the independent school will provide boarding accommodation for pupils.
- (5) The type or types of—
  - (a) additional learning provision made by the independent school for pupils with additional learning needs (if any), and
  - (b) special educational provision made by the independent school for pupils with special educational needs (if any).
10. Whether the independent school will provide day care within the meaning of article 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(23) for any child looked after in the school.
11. A plan showing the layout of the premises and boarding accommodation.
12. Detailed curriculum plans, schemes of work and pupil assessment procedures.
13. Copies of the written policies required by paragraphs 2(1)(a), 6(b), 7(b), 8(a), 11(a), 12, 13 and 15 of the Schedule to the Independent School Standards (Wales) Regulations 2024(24).
14. A copy of the complaints procedure required by paragraph 29 of the Schedule to the Independent School Standards (Wales) Regulations 2024.
15. Whether the proprietor intends to provide any child with boarding accommodation at the independent school (or elsewhere pursuant to arrangements made by them) for more than 295 days in any year.
16. The religious ethos of the independent school, if any.
17. Whether the premises of the independent school, including boarding accommodation, are at two or more separate locations and, if so, the address of each such location.
18. A copy of the independent school's risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999(25) insofar as it relates to obligations under Part 2 of the Regulatory Reform (Fire Safety) Order 2005(26).

## PART 3

### INFORMATION REQUIRED IN AN INITIAL RETURN

- 19.—(1) The number of pupils in each year group.
- (2) In the case of an independent school with boarding accommodation—
  - (a) the number of boarding pupils, and
  - (b) the ages (as at 31 August immediately preceding the date referred to in regulation 4(2)(b)) of the oldest boarding pupil and the youngest boarding pupil.
- (3) In the case of an independent school also providing part-time education, the numbers required by sub-paragraph (1) must be stated separately in respect of pupils receiving part-time education and those receiving full-time education.

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(23) S.I. 2010/2839 (W. 233).

(24) S.I. 2024/27 (W. 10).

(25) S.I. 1999/3242.

(26) S.I. 2005/1541.



(4) In the case of a co-educational independent school, all numbers required by this paragraph must be stated separately for male and for female pupils.

**20.**—(1) The number of pupils at the independent school in respect of whom—

- (a) a local authority maintains an individual development plan;
- (b) a local authority maintains a statement of special educational needs under section 324 of the 1996 Act.

(2) The number of pupils at the independent school who do not fall within sub-paragraph (1), but who have been identified as having additional learning needs or special educational needs.

**21.** The number of pupils at the independent school who are looked after by a local authority.

**22.** The following information relating to teachers employed at the independent school (with numbers given separately for male and for female teachers)—

- (a) the number of full-time teachers,
- (b) the number of part-time teachers, and
- (c) the aggregate number of hours a week normally worked by part-time teachers in term time.

**23.** The following information relating to every person employed at the independent school—

- (a) their name and any previous names by which they have been known,
- (b) their sex, date of birth, National Insurance number and the capacity in which they are employed,
- (c) in the case of each teacher, their qualifications and a statement as to whether they are a head teacher, a full-time teacher or a part-time teacher, and
- (d) where relevant to any individual whether—
  - (i) a DBS certificate has been obtained in respect of that individual before or as soon as practicable after that individual's appointment, or
  - (ii) where that individual is registered with the DBS up-date service, a check is made of the individual's DBS certificate status,

and that a copy of that DBS certificate or the result of that DBS up-date service check is available to the proprietor.

**24.**—(1) The amount of annual tuition and other fees (excluding fees for boarding accommodation) payable in respect of a pupil at the independent school as a condition of their attendance.

(2) In the case of an independent school providing boarding accommodation for pupils, the amount of annual boarding fees payable in respect of a boarding pupil.

## PART 4

### INFORMATION REQUIRED IN AN ANNUAL RETURN

**25.** All the information specified by Parts 2 and 3 of this Schedule with the exception of that specified in paragraphs 9(5), 10, 11, 12, 13, 16 and 23.

**26.** For every person who has commenced employment or ceased employment at the independent school since the date of the last return to the registration authority—

- (a) their full name and any previous names by which they have been known,

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- (b) their sex, date of birth, National Insurance number and the capacity in which they are employed,
- (c) in the case of each teacher, their qualifications and a statement as to whether they are a head teacher, a full-time teacher, or a part-time teacher (except that no information as regards qualifications is required in the case of a teacher who has ceased employment), and
- (d) in the case of a person who has commenced employment, confirmation that paragraph 20(2)(e) of the Schedule to the Independent School Standards (Wales) Regulations 2024 has been complied with<sup>(27)</sup>.

**27.** Confirmation that paragraph 23<sup>(28)</sup> of the Schedule to the Independent School Standards (Wales) Regulations 2024 has been complied with.

**28.** In the two years preceding the date of the return, except in the case of a first annual return, the number of pupils attending the independent school for whom boarding accommodation was provided there (or elsewhere pursuant to arrangements made by the proprietor) for more than 295 days in that year.

**29.**—(1) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years who are pursuing courses for examinations or assessments resulting in a qualification.

(2) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years who have completed courses for an examination in the General Certificate of Education (Advanced or Advanced Subsidiary Level), or the Advanced Vocational Certificate of Education (AVCE), but remain at the independent school for a purpose other than for pursuing any further course of that nature.

(3) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years (except for those who fall into the category of pupils referred to in sub-paragraph (2)) who attend the independent school for a purpose other than for pursuing courses for a relevant examination or assessments resulting in a qualification.

(4) The number specified in the annual return under sub-paragraph (1) and (2) must be stated separately for—

- (a) courses exclusively in mathematical or scientific subjects,
- (b) courses exclusively in other subjects,
- (c) courses partly in mathematical or scientific subjects and partly in other subjects, and
- (d) male pupils and female pupils.

**30.** Where a change has occurred in the premises of or boarding accommodation at the independent school since the date to which the immediately preceding annual return was made up (or, in the case of the first annual return, since the date to which the information contained in the application for the registration of the independent school was made up), the particulars of such change.

**31.** Where a change has occurred in the membership of any organisation named as the proprietor in the register, or in an application to enter the independent school in the register, for any new member, the information required by paragraphs 3 to 6 of this Schedule.

**32.**—(1) The number of pupils at the independent school who are Child students or Students.

(2) For the purposes of this paragraph—

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<sup>(27)</sup> Paragraph 20(2)(e) requires a DBS certificate to be obtained or a check to be made with the DBS up-date service.

<sup>(28)</sup> Paragraph 23 requires DBS certificates or DBS up-date service checks to be renewed for all relevant persons at least every three years.

- (a) “Child student” means a person who has, or had, permission under Appendix Child Student, Appendix CS: Child Student under the Immigration Rules in force before 1 December 2020, or as a Tier 4 (Child) Student under the Immigration Rules in force before 5 October 2020;
- (b) “Immigration Rules” means rules under section 3(2) of the Immigration Act 1971<sup>(29)</sup>;
- (c) “Student” means a person who has, or had, permission under Appendix Student, or Appendix ST: Student of the Immigration Rules in force immediately before 1 December 2020, or as a Tier 4 (General) Student under the Immigration Rules in force before 5 October 2020.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Independent Schools (Provision of Information) (Wales) Regulations 2003 (“the 2003 Regulations”). These Regulations apply in relation to Wales.

These Regulations relate to applications for registration of independent schools under section 160(1) of the Education Act 2002 and information to be provided periodically by the proprietors of independent schools under section 168 of that Act.

Regulation 2 and Part 1 of the Schedule contain interpretation provisions.

Regulation 3 and Part 2 of the Schedule make provision for the form and content of an application to register an independent school under section 160(1) of the Education Act 2002.

Regulation 4 makes provision for the submission by the proprietor of an independent school of an initial return within 90 days of the admission date or, if later, a request by the registration authority. Part 3 of the Schedule prescribes the information to be included in the initial return.

Regulation 5 makes provision for the submission by the proprietor of an independent school of annual returns to the registration authority. Part 4 of the Schedule prescribes the information to be included in the annual return.

Regulation 6 provides that if it is satisfied that a proprietor of an independent school has failed to comply with any requirement of regulation 4 or 5, the registration authority may remove the school from the register. Regulation 7 provides that it is an offence for a proprietor of an independent school to fail to comply with any requirement of regulation 4 or 5.

Regulation 8 revokes the 2003 Regulations. Regulations 9, 10 and 11 revoke other instruments and provisions that amend either the 2003 Regulations or the Independent School Standards (Wales) Regulations 2003.

Regulation 12 makes transitional provision for the 2003 Regulations in cases where an initial return is required or annual return requested before the coming into force of these Regulations.

The Immigration Rules, which are referred to in paragraph 32 of the Schedule to these Regulations, can be found at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

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(29) 1971 c. 77.

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The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on [www.gov.wales](http://www.gov.wales).