

National Assembly for Wales

Children and Young People Committee

Education (Wales) Bill : Stage 1

Response from : NASUWT Cymru

1. The NASUWT welcomes the opportunity to submit written evidence to the Children and Young People Committee (CYPC) inquiry into the general principles of the Education (Wales) Bill 2013 (the Bill).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT notes that the terms of reference for this inquiry cover the consideration of four specific topics with the first topic, the general principles of the Bill, covering five areas on which legislation is proposed, and the second topic relating directly to these five areas.
4. The NASUWT will, therefore, cover the first two topics by reference to the five areas proposed for legislation and address separately the remaining two topics.
5. Where the NASUWT has submitted previously responses to the Welsh Government on the areas proposed for legislation, as described in the Bill, these have been annexed to this response.

SPECIFIC COMMENTS

6. **Education Workforce Council – Registration and regulation of teachers and the wider workforce**

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Rather than reiterate here the issue and concerns raised by the NASUWT in the consultations conducted in 2011/12 (copy of responses attached at Annex A and B), this written evidence will focus on those aspects of this section of the Bill that should be of concern to the CYPC, if the new registration and regulatory body is to command the respect of teachers and the wider education workforce.

The NASUWT offers the observations and comments that follow in a simple bullet-point form to provide clarity and focus to this evidence.

- i. The NASUWT welcomes the change of name, as the General Teaching Council for Wales (GTCW) failed to command respect amongst the teaching profession and has become a tarnished brand.
- ii. The NASUWT does not believe that the role of the new Education Workforce Council (the Council) should extend beyond a regulatory function and remains opposed to the provisions in the Bill that provide for the Council to contribute to the improvement of standards of teaching and the quality of learning in Wales.
- iii. The NASUWT maintains that the establishment of the Council should be based on a process of election, rather than appointment. However, as the Bill does not make such a provision, the Union believes that there should be automatic seats on the Council for representatives from each of the trade unions that represent the education workforce. The NASUWT urges the CYPC to call on the Welsh Government to amend the Bill accordingly.
- iv. The NASUWT notes the provisions relating to the performance management/appraisal of the education workforce and recognises that the Explanatory Memorandum acknowledges that such arrangements are well established for teachers, but fails to acknowledge that such arrangements are also in place for

lecturers. The provision in the Bill that would require Welsh Ministers to consult before such arrangements were extended to cover other registered persons is welcomed, as the workload implications for appraisers would be onerous and would need to be considered fully and costed in terms of time and additional staffing.

- v. The NASUWT maintains that the provisions in the Bill that relate to the code of conduct and practice for registered persons (the Code) fail to specify if the Code, that is to be prepared for consultation by the Welsh Minister, will seek to alter the current code that applies to registered teachers. Nonetheless, the Union welcomes the provisions that require consultation on the Code.
- vi. The NASUWT regrets that the Bill does not make provision to require the Council to consult with the trade unions that represent the education workforce over the formulation and/or amendments to the rules and procedures that apply to registered persons in respect of the Council's disciplinary functions. One of the failings of the GTCW was that the Council introduced changes to these rules and procedures without full and meaningful consultation. The Union maintains it would be a fundamental error of judgement to allow the Council to operate in such a cavalier manner and urges the CYPC to call on the Welsh Government to amend the Bill accordingly.
- vii. Whereas the provision in the Bill that allows for a disciplinary case to be determined without a hearing is welcomed, the NASUWT is concerned that, as constructed, the decision rests with the Council and not with the registered person. Given the GTCW's propensity to seek to 'grandstand' in carrying out its disciplinary function in order to justify its existence, the Union urges the CYPC to seek to amend the Bill to provide the registered person with the right to accept a sanction without the need for a hearing.

- viii. The NASUWT maintains that the appeals process places too high and too onerous a condition on potential appellants as it requires an appeal to the High Court. The Union urges the CYPC to seek to amend the Bill to provide an appeals process that can be dealt with under a different framework and/or jurisdiction.
- ix. The NASUWT sees no reason why the categories of persons who will be required to register should not be extended at this time to cover members of the inspectorate, the consortia and local authority employees who comprise part of the education workforce. The Union urges the CYPC to seek to amend the Bill to cover these persons.
- x. The NASUWT maintains that because registration with the Council will be a condition of employment, the employer should then cover the cost of the registration fee through funding provided by the Welsh Government. The Union urges the CYPC to seek to amend the Bill to ensure that provision is made to prevent the fee from becoming a tax on the education workforce in Wales.

7. Reform of the registration and approval of independent schools in respect of special educational needs (SEN)

The NASUWT was largely supportive of this reform in the response submitted to the Welsh Government through the consultation conducted in 2012 (copy of responses attached at Annex C).

However, the Union believes it may be of interest to the CYPC to consider the note of caution expressed in this response about the possible implications for individual pupils with SEN requiring placements in independent schools and for local authorities.

8. Post-16 assessment of educational and training needs and specialist Further Education

The thrust of the response submitted by the NASUWT to the consultation conducted in 2012 on this area of legislation was to welcome, in principle, the proposals to bring coherence across the sectors in terms of assessing and meeting the additional learning needs of post-16 learners and making the process less complex (copy of the response attached at Annex D).

The Union did, however, express concern about the need to assess any potential hidden costs to local authorities in the discharge of the responsibility for arranging for an assessment of educational need and securing Post-16 provision for learners with learning difficulties and/or disabilities (LLDD).

The NASUWT notes the cost-benefits analysis contained in the Explanatory Memorandum, but suggests that this is an area that the CYPC might wish to explore further with the Welsh Government and local authorities.

9. School term dates

The NASUWT presented a measured, but frank and robust response to the consultation conducted by the Welsh Government in 2012 on the proposal for legislation on school term dates (copy of the response attached at Annex E).

Whereas the move to establish common school holiday patterns, albeit they were referred to as school term dates in the consultation document, was welcomed, the Union expressed grave concern about the power being given to Welsh Ministers and laid down markers with the Welsh Government over school holiday patterns.

In highlighting potential barriers to this area of legislation, the NASUWT gives notice to the CYPC that the Union will expect Welsh Ministers, in the exercise of the powers provided in the Bill, to:

- i. maintain a three-term year with half-term breaks of at least a week, a break of at least two weeks at the end of the Autumn and Spring terms, and a break of at least six weeks at the end of the Summer term;
- ii. respect fully the contractual nature of the holiday pattern and the need for the employer, that is, the local authority and/or the school governing body, to reach agreement with the school workforce trade unions before implementing change;
- iii. recognise that the Welsh Government has no employer function and that, as a consequence, any direction to employers would have to be based on a collective agreement with the trade unions representing the school workforce through the provision 32B (3 & 4) of the Bill;
- iv. be mindful of the potential for dispute and industrial action if directions are made that do not carry the support of the school workforce.

The NASUWT does, however, welcome the provisions in the Bill that will add to the Education Act 2002 to make it clear that in Wales, the responsibility for fixing term and holiday dates will remain with local authorities, or governing bodies in the case of a foundation or voluntary aided schools, and that either the local authority or the governing body, depending on the circumstances, will retain responsibility for fixing school session times.

10. The appointment of HM Chief Inspector and HM Inspector of Education and Training in Wales under section 19 of the Education Act 2005

The NASUWT recognises that the Bill is being used to achieve the repeal of section 19(6) of the Education Act 2005 to remove the Secretary of State from the appointment process of the Chief Inspector and Inspector of Education and Training in Wales, in accordance with confirmation received from the Lord President of the Privy Council that the First Minister in Wales should advise on such appointments.

11. The financial implication of the Bill and the Regulatory Impact Assessment

The NASUWT recognises the work that has been undertaken in terms of the regulatory impact and cost-benefit assessments, but notes the extensive use of estimates and assumptions in identifying risk and benefits, and in reaching conclusions and preferred options.

12. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

The NASUWT welcomes the summary provided in the table at chapter 5 of the Explanatory Memorandum but would urge the CYPC to look at the concerns expressed by the Union in the consultation responses submitted previously to the Welsh Government, as attached, in respect of some of the powers provided to Welsh Ministers and perhaps, more importantly, to consider whether or not sufficient safeguards have been put into place in the Bill to prevent the abuse of such powers.



Rex Phillips

Wales Organiser

NASUWT

*The largest teachers' union in Wales and the UK
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Paper 4 : Annex A

1. The NASUWT welcomes the opportunity to comment on the proposals to amend the requirements for registration of the education workforce in Wales.
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT believes that the status of the teaching profession is enhanced by a regulatory body that has a clear remit, focuses on regulatory matters, enhances the status of the profession, does not seek to extend its remit to pay and conditions of service matters and does not seek to present itself as a substitute for representation by recognised trade unions.
4. The NASUWT believes the General Teaching Council for Wales (GTCW) has failed all of these tests and consequently has failed to command the confidence and respect of either the public or the profession.
5. Teachers are entitled to have a regulatory body that safeguards their professional status. The NASUWT believes that the regulatory function should be akin to, for example, the General Medical Council (GMC).
6. The NASUWT has called consistently for the GTCW to be disbanded because of the way in which the Council conducts professional competency and disciplinary hearings and its desire to extend its functions beyond that of a regulatory body.
7. Successive surveys conducted by the NASUWT have provided clear evidence that the GTCW is not valued by the teaching profession and has now become a tainted brand.

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8. The NASUWT is of the clear view that the establishment of a new registration body that respects fully the human right to privacy and acts in the interests of the public and raises the status of the teaching profession provides the most appropriate way forward.

SPECIFIC COMMENTS

9. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

Question 1

Do you agree that registration should be extended beyond school teachers to the wider education workforce in Wales, to include school learning support staff, further education lecturers and the work-based learning workforce?

The NASUWT does not believe that the case has been made in the consultation paper for extending registration beyond school teachers. The teaching profession should have a regulatory body dedicated to maintaining and enhancing its professional status.

The NASUWT reminds the Welsh Government that all education practitioners, and others who work and/or come into regular contact with children and young people, are required to register with the Independent Safeguarding Authority (ISA) to ensure their suitability to work with these groups.

In terms of the conduct and competence of the wider education workforce, the NASUWT maintains that these are employment matters and should be dealt with by the employer.

The NASUWT maintains that the clear distinction between the expectations and standards that can be required of teachers and headteachers and the wider education workforce argues against requiring the registration of school learning support staff and the work-based learning workforce.

The NASUWT understands that a registration body already exists for further education lecturers.

Question 2

Do you think that any other members of the education workforce, for example youth workers, play workers and other school staff, should be registered?

As stated in answer to question 1, the NASUWT does not believe that the case has been made in the consultation paper for extending registration beyond school teachers.

The NASUWT reminds the Welsh Government that all education practitioners, and others who work and/or come into regular contact with children and young people, are required to register with the ISA to ensure their suitability to work with these groups.

In terms of the conduct and competence of the wider education workforce, the NASUWT maintains that these are employment matters and should be dealt with by the employer or they should have their own distinct professional bodies.

The analogy can be made with the NHS where there is a diverse workforce in terms of skills and responsibilities but different bodies have responsibility for standards and regulation. This ensures that the distinct nature of each group's professional qualifications and role is recognised.

Question 3

Do you agree that the functions of a registration body in Wales should include checks that individuals are appropriately qualified and fit to practise and a disciplinary function leading to potential barring of individuals who are deemed unfit?

The NASUWT maintains that this should be the sole function of a registration body and that function should be limited to teachers.

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The NASUWT questions the suitability of the references to 'fit' and 'unfit' to practice, as this could be confused with medical fitness to teach, which is covered by separate and distinct regulations.

Question 4

Do you agree that decisions about functions such as discipline and professional competence should be made independent of government?

The NASUWT agrees that the decisions about discipline and professional competency should be made independent of government but maintains that government has a responsibility to act in the public interest and therefore to determine how such functions will be carried out and to ensure that the body responsible is funded fully out of the public purse, albeit that this may take the form of the Welsh Government reimbursing the fee, in full, to registered teachers.

Further, the NASUWT maintains that government has a responsibility to ensure that the actions of a regulatory body charged with the responsibility of carrying out functions such as discipline and professional competence should not bring the teaching profession into disrepute.

The NASUWT is clear that the GTCW has undermined public confidence in the teaching profession because of the failure to respect the confidentiality of the school disciplinary process and the human right to privacy, and the 'grandstanding' that surrounds disciplinary cases.

The NASUWT maintains that it is an affront to the rules of natural justice to place details of school disciplinary hearings and unfounded allegations in the public arena prior to any decision being made by the professional conduct or professional competency panels.

Question 5

Do you agree that wider functions should be added on a phased basis into the work of the new or reconstituted registration body? These could include

approval of initial training courses, requirements for continuing professional development and setting of professional standards.

The NASUWT is of the firm view that the sole function of a registration body should be to regulate. This consultation is premised on expanding the function and is therefore fundamentally flawed.

The NASUWT maintains that providing a regulatory body with powers of accreditation for initial training courses could constitute a conflict of interest.

In addition, the NASUWT maintains that continuing professional development (CPD) and professional standards relate to teachers' conditions of service and should be outside the remit of a regulatory body. The role of a regulatory body should be, where necessary, to make judgements in relation to standards, not to set the standards.

The NASUWT maintains that it is the role of government, in consultation with the accredited teacher trade unions, to define the standards expected of teachers.

Question 6

Are there any other specific functions you think that the new or reconstituted registration body should undertake?

No. The NASUWT maintains that the functions of a registration body should be to register teachers and regulate the teaching profession.

Question 7

Do you think that a single professional council, with a membership with expertise across the wider education workforce, is the best way to secure appropriate professional expertise for the new or reconstituted registration body, or would a series of sector councils each specialising in a specific area of the workforce be more appropriate?

The NASUWT has argued consistently for a teachers' council, comprising elected registered teachers with designated seats for the teacher trade unions, not a general teaching council.

Consequently, if the wider education workforce is to be subject to registration, the NASUWT maintains that the new or reconstituted registration body should be constituted on the basis of a series of sector-specific councils.

Further, the NASUWT maintains that the membership of such councils should comprise elected members of the workforce in the sector-specific area, with seats provided for the recognised trade unions in those areas.

Question 8

Do you think that there should be a flat-rate fee for registration payable by all those registered or should differentiated fee rates apply?

The NASUWT maintains that if registration is a condition of employment, then the employer should either pay or reimburse the registration fee.

Further, the NASUWT maintains that responsibility for funding the fee, or reimbursement thereof, should rest with the Welsh Government.

Question 9

Do you think that greater clarity and coherence in requirements for matters such as qualifications, professional standards, performance management and professional development could support our drive to improve standards and flexibility across the wider workforce?

The NASUWT maintains that this question is entirely misplaced within the context of this consultation.

The NASUWT suggests that whether or not education practitioners are required to register with a registration body will not in itself support the drive to improve and raise standards and flexibility across the wider workforce.

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Indeed, the NASUWT is concerned that subjecting the wider workforce to the practice that is visited on the teaching profession could result in a loss of highly valued and dedicated support staff.

Question 10

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

The NASUWT is clear that any new or reconstituted registration body for teachers must:

- be a teachers' council;
- comprise practising teachers and their trade union representatives;
- be fully funded by the Welsh Government;
- register and regulate teachers;
- ensure that the discharge of its duties enhances the status of the profession;
- respect the human right to privacy throughout conduct and competency hearings up to the point of decision.



Chris Keates

General Secretary

Paper 4 : Annex B

1. The NASUWT welcomes the opportunity to comment on the proposals for the registration of the education workforce in Wales.
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT is disappointed to note that very little account has been taken of the views expressed by the NASUWT in response to the previous consultation earlier this year.
4. The NASUWT remains of the firm view that the sole function of a registration body should be to regulate, and therefore rejects the proposals to expand the remit of the new body.
5. Further, the NASUWT rejects the proposal to establish the new body on the basis of appointment by the Welsh Government rather than maintaining a democratic basis for the Council.

SPECIFIC COMMENTS

6. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

Question 1 – Do you consider that we have identified the right groups in the first instance to be registered?

The NASUWT remains of the view that the teaching profession should have a regulatory body dedicated to maintaining and enhancing its professional status and does not believe that there is a need to extend registration beyond school teachers.

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However, if registration is to be extended to other groups, the NASUWT maintains that anyone who undertakes classroom observation or who professes to be able to identify and/or demonstrate good pedagogic practice in the classroom should not only possess qualified teacher status (QTS) but should also be required to register with the council. This would include all members of the inspectorate, all school improvement officers and advisers.

Question 2 – Is the proposal to collect all data on the workforce including qualifications in the first instance before identifying the minimum requirements for registration, appropriate and fair?

The NASUWT maintains that it will be a matter for individual members of the workforce to determine if they will allow such data to be passed on to what would be a third party.

Further, the NASUWT expects that individuals will be given written details and assurances about the use of such data and that their expressed permission will be sought before it is shared with government, employers or any other agency or party.

The NASUWT has grave reservations about this proposal and would expect to be consulted fully on the nature and extent of the data to be collected and the use to which it will be put.

Question 3 – Do you believe the arrangements for a two-staged approach within the disciplinary process will instil confidence in the professions and to the parents/carers, children and young people who they serve?

Although it is acknowledged that the introduction of a two-staged approach within the disciplinary process has the potential to reduce the concerns and lack of confidence that teachers have in the GTCW, the NASUWT maintains that the proposal to move to a process that considers fitness to practise, rather than using the current case categories, will be viewed with distrust and distain.

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The NASUWT notes that employers would be under a duty to report to the registration body any conduct of an individual who has potentially broken the code of conduct. Despite the qualification that this requirement would not supersede any other employment policies within an organisation or set out in legislation, the Union maintains that rigorous safeguards would need to be built in to the referral process to ensure that due employment practice and process was followed before cases were placed before the registration body.

The NASUWT remains of the view that it is an affront to the rules of natural justice to place details of school disciplinary hearings and unfounded allegations in the public arena prior to any decision being made by those responsible for hearing cases.

Consequently, the NASUWT urges the Welsh Government to ensure that in the operation of its disciplinary function the registration body commands the confidence of the teaching profession and the wider school workforce by respecting fully the confidentiality of the school disciplinary process and the Human Right to Privacy.

The NASUWT is not suggesting that cases should not be publicly listed or that the outcomes should not be publicly reported. However, the Union maintains that those called before the regulatory body should have the right to decide if a hearing is held in public or in private.

Question 4 – Do you believe that one professional code of conduct and practice could be developed across the relevant sectors taking account of their roles and responsibilities?

No.

The NASUWT remains of the view that the diverse nature of the education workforce in terms of skills and responsibilities argues for different

professional codes where the distinct nature of the professional qualifications and roles of each group is recognised.

Question 5 – Do you agree that the council members should be appointed using the public appointments process?

No.

The NASUWT stands firmly opposed to this proposal, not least, since the Union has argued consistently that the regulatory body for teachers should be a teachers' council, comprising elected registered teachers with designated seats for the teacher trade unions.

However, given that it is proposed to establish a single council, the NASUWT maintains that the membership should comprise elected members of the education workforce with seats provided for the recognised trade unions.

Question 6 – Do you agree that the advisory group members should be appointed by nomination by specified organisations and chaired by one of the relevant sector representatives from the council to ensure formal link between decision making council and the advisory groups?

The NASUWT rejects the notion of advisory groups on the basis that the only function of the new registration body should be to regulate.

Further, the NASUWT maintains that the proposal that the members of these advisory groups would be appointed following nomination by a range of specific organisations will do little to inspire confidence that the groups would be truly representational.

Question 7 – We intend to collect data at an individual level in a manner that would support multiple uses, in order to streamline data collection and improve quality and flexibility. Would you support such a development?

No.

The NASUWT does not support this proposal for the reasons referred to in answer to question 2.

Question 8 – Do you agree that the registration body should have powers to and accredit and professionally recognise relevant initial training courses?

No.

The NASUWT stands firmly opposed to this proposal.

The NASUWT remains of the view that providing a regulatory body with powers of accreditation for initial training courses could constitute a conflict of interest.

Question 9 – Should the body also have a role as necessary to accredit in-service training across the sectors in key areas such as management and leadership?

No.

The NASUWT maintains that providing a regulatory body with power of accreditation for in-service training across the sectors in key areas related to the work of those it regulates could constitute a conflict of interest.

Question 10 – Do the indicative fee levels represent a fair differential between the different groups to be registered and offer value for money for the professional regulation offered?

The NASUWT would not expect the fees to be any greater than those indicated and suggests that they should constitute maximums above which the fees would not rise.

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However, and for the avoidance of doubt, the NASUWT remains of the view that as registration will be a condition of employment, the employer should either pay or reimburse the registration fee.

The NASUWT expects the Welsh Government to budget for the reimbursement of the fee for all those required to register, regardless of their employment status.

Question 11 – Do you agree that the reconstituted body should be left to determine the appropriate levels of differentiated fees for different groups of registrants thus enabling it to exercise independence and discretion in undertaking its work programme?

No.

The NASUWT stands firmly opposed to the notion of the reconstituted body being able to determine the level of the differentiated fees

The NASUWT notes with interest that the reference to the Welsh Government retaining a veto on increases in fee level set by the body in the section on 'Status and governance structure' is not included in the section on the 'Fee'.

In any event, the NASUWT maintains that the issue of the fee would become irrelevant if the expectation that the Welsh Government will budget for the reimbursement of the fee for all those required to register, regardless of their employment status, is realised.

Question 12 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Please enter here:

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The NASUWT continues to question the suitability of using the term 'fitness to practise', as this could be confused with medical fitness to teach, which is covered by separate and distinct regulations.

The NASUWT supports the view that the Welsh Government must ensure that all groups required to register must be protected by common frameworks for pay and conditions of service as this would reflect the protection enjoyed by teachers through the School Teachers' Pay and Conditions of Service Document that applies across England and Wales.



Chris Keates

General Secretary

For further information on the Union's response, contact Rex Phillips, Wales Organiser.

The NASUWT questions the suitability of the references to 'fit' and 'unfit' to practice, as this could be confused with medical fitness to teach, which is covered by separate and distinct regulations.

Paper 4 : Annex C

1. The NASUWT welcomes the opportunity to comment on the proposal to reform the registration and approval of independent schools in respect of special educational needs (SEN).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT notes that the thrust of this consultation is to remove the requirement for approval from Welsh Ministers for independent schools to admit pupils with SEN and place the duty firmly with local authorities who already have the responsibility to secure appropriate provision for children and young people with SEN.
4. It is suggested that the requirement for the approval of Welsh Ministers, under section 347 (s347) of the Education Act 1996, is unnecessary as it duplicates the issues required to be considered by Welsh Ministers under section 160 (s160) of the Act.
5. Although it is acknowledged that there appears to be some duplication with the processes used to register and approve independent schools as required under these sections, it appears that s347 is child-centred, whereas s160 is school-centred.
6. The NASUWT questions whether the Welsh Government has considered carefully if the repeal of s347 can be reconciled with other Welsh Government policies and initiatives that place the focus firmly on children and young people.
7. Further, in noting from the Ministerial foreword, that the Minister for Education and Skills is keen to take into consideration the consultation on

the wider reform of the current SEN, the NASUWT trusts that this keenness will not outweigh the caution that is necessary to avoid any suggestion of pre-empting the outcome of that consultation.

SPECIFIC COMMENTS

8. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

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

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

Although the NASUWT recognises the merit in the argument that s347 is unnecessary as it duplicates the provisions of s160, and notes that the concerns expressed in response to the consultation letter of October 2010 that sought the repeal of s347 under the Education (Wales) Measure 2010 have to some extent been addressed by the safeguards that are now being proposed, the Union remains concerned that safeguards present reactive rather than proactive measures. As the regulations stand, s347 requires the Welsh Government to approve independent school placements before pupils are placed, whereas the safeguards provide for Ministers to intervene after placements have been made.

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT questions the prudence of including the reference to additional needs (AN) in this consultation as it could be seen to be pre-empting the

outcome of the consultation on the reform of the legislative framework for SEN.

The NASUWT reminds the Welsh Government that at this time there is no statutory footing in Wales for the concept of AN.

However, and notwithstanding the views expressed above about the repeal of s347, the NASUWT agrees that independent schools that cater for pupils who are currently protected under a statement of SEN should be required to register to admit such pupils.

Indeed, the NASUWT maintains that such registration should be required where independent schools cater for pupils with SEN but who are not in receipt of a statement of SEN.

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT recognises and accepts that independent schools that are registered to admit pupils with SEN should be subject to annual monitoring visits.

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT welcomes the proposal to publish annual monitoring reports in the interests of openness and transparency.

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT accepts the need for guidance to be issued to local authorities and proprietors of independent schools, and would welcome the opportunity to assist in the formulation of the guidance.

Question 6 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

In noting that in removing the requirement for approval of SEN placements in independent schools from Welsh Ministers, and placing the duty firmly with local authorities, the NASUWT is concerned that the consultation document is silent on the issues of funding.

The NASUWT expects local authorities to be provided with sufficient funds to allow the discharge of their duty to be determined on need rather than on affordability.



Chris Keates

General Secretary

Paper 4 : Annex D

1. The NASUWT welcomes the opportunity to comment on the proposals for the reform of the legislative framework for special educational needs *Forward in partnership for children and young people with additional needs*.
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT welcomes the statement in the Ministerial forward that the aim is to build on existing good practice with evolutionary rather than revolutionary change.
4. The NASUWT acknowledges that the proposals are aimed at taking a more holistic approach to providing for the whole range of additional needs (AN) of children and young people and recognises that this approach reflects the provision made for pupils with additional needs in Scotland.
5. The proposal for a full partnership between education, health and social service is welcomed in principle, but the NASUWT believes there are key challenges to be addressed in the practicalities and implementation of multi-agency working.
6. Establishing effective collaboration and multi-agency working is extremely challenging. It requires the appropriate provision of time and adequate resources, and relies on a clear framework being put in place.
7. Multi-agency working will allow for the sharing of information, knowledge and expertise and that this should avoid having to duplicate the collection of information. However, the NASUWT refutes any notion that there will be less work involved.

8. Evidence of issues arising from multi-agency working suggests that effective multi-agency work is time-consuming, at least at the outset, and that key personnel need to be employed in positions to co-ordinate and facilitate the process.
9. There can be no assumption that various agencies involved in working together will have the capacity to pick up the additional work involved. The Welsh Government needs to reflect carefully on the cuts that have been visited on services, leaving organisations with fewer resources. In such circumstances where there are already increasing barriers on staff, additional work is unlikely to be addressed properly and effectively.
10. Further, and notwithstanding the stated intention to move away from education services being perceived as the lead service, evidence from both England and Scotland indicates that schools and teachers, especially those with responsibility for pupils with special or additional educational needs, come under extreme pressure to assume lead responsibility for managing and co-ordinating work across services, and this has added significantly to workload burdens and indeed cost pressures on school budgets.
11. Evidence from across the UK also indicates that there are problems ensuring that all of the agencies involved attend and contribute to meetings. Any failure to attend such meetings places even greater demands on schools, school leaders and teachers.
12. It is, therefore, with some concern that the NASUWT notes that the responsibility for meeting the needs of children and young people rests with the local authority and that there is no commensurate responsibility placed on health authorities. In practice, this could result in health authorities placing less weight on their responsibility in this area. In addition, it may lead to local authorities having to fight for the funding and support that children need in order to obtain services.

13. The NASUWT notes the range of legislation that shaped the current statutory framework and acknowledges that the focus for the proposed reform is the United Nations Convention on the Rights of the Child (UNCRC) which is now incorporated in the Rights of Children and Young Persons (Wales) Measure 2011.
14. In the spirit of the evolutionary rather than revolutionary approach, the NASUWT trusts that due regard will continue to be taken of the UNESCO Salamanca Statement (1994) as this recognises the diverse needs of children, the importance of a continuum of support and services and the importance of building an inclusive society and that the provision of the Equality Act 2010 will remain an essential key principle within the Welsh Government's work for children and young people.
15. The NASUWT notes the list of improvements that are envisaged through the development of an inclusive system that tackles inequality and barriers to inclusion, participation and achievement, but is disappointed by the lack of ambition in ensuring that the provision and support is adequately resourced. Major cultural and organisational change cannot be 'done on the cheap'.
16. Although the merit in replacing the current framework with a simpler and more person-centred system appears obvious, the NASUWT maintains that it would be a mistake to assume that the system will be simpler to establish and cheaper to run or that less support will be required. The simplicity must centre on access and operation rather than economics.
17. The NASUWT challenges the expectation that the changes, as proposed, will either be cost-neutral or generate net cost savings. The initial costs of establishing the new system, providing the requisite training and support, and creating specific co-ordinator posts are likely to be high. Simply assuming that staff in the various agencies will work together is unrealistic and ignores the challenges of multi-agency working.

18. The NASUWT welcomes the principles that underpin the ability of children and young people with AN to exercise and benefit from the Welsh Government's rights-based approach but maintains that subscribing to these principles will inevitably, and justifiably, increase costs.

SPECIFIC COMMENTS

19. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

Question 1

Do you agree with the proposals in **section 2**, and that special educational needs (SEN) should be replaced by additional needs (AN)?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT agrees, in principle, with the proposal to replace SEN with AN as the Union recognises the value and potential benefits of adopting a more holistic approach to meeting the needs of children and young people.

However, the NASUWT does not agree that adopting such an approach will be cost-neutral or lead to savings being made.

Inevitably, taking a more holistic approach to need means that some needs that would have been outside the framework previously will now be included. The cost implications should be obvious as schools, local authorities and other agencies will need to ensure that they meet the various needs in a systematic, coherent and fair way.

However, the NASUWT notes with some concern the suggestion contained in paragraph 2.5 that the reforms will lead to a smaller proportion of children and young people being regarded as having AN. Simply redefining special needs does not mean that those needs excluded disappear. This is the path being taken by the Coalition Government in Westminster and one the Welsh Government should avoid.

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This concern is heightened when read in conjunction with the description of need and the provision required to meet the needs outlined in paragraphs 2.6 to 2.9, as it appears that the multi-agency approach that is at the heart of the reforms will only be available to a very small proportion of children.

The NASUWT reminds the Welsh Government that between 2002/03 and 2010/11 the number of statements dropped from 16,212 to 13,858 – a decrease of 2,359 statements.

The NASUWT trusts that the description of need contained in paragraphs 2.6 to 2.9 will not lead to a further decline in needs-based access to provision.

Further, it is clear from these descriptions that there is an expectation that schools will cater for the vast majority of AN. If that expectation is to be realised, teachers and support staff will have to have access to high-quality training and professional development, and teachers will need to be provided with time, in addition to their statutory entitlement, to plan, prepare and assess.

Question 2

In **section 3** we state that statements of SEN should be replaced with an integrated assessment and planning process and that an integrated web-based Individual Development Plan will be developed to replace or integrate not just statements, but the range of individual plans to which children and young people might be subject. Do you:

a) agree with the proposal in **section 3**?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT recognises the merit in replacing the statements of SEN with an integrated assessment and planning process through the introduction of the Individual Development Plan (IDP) that seeks to provide a coherent approach across services to meeting needs.

However, the NASUWT issues a note of caution in relation to the challenges presented by this approach. Evidence from teachers where attempts to introduce these approaches in other parts of the UK has raised some serious concerns. Feedback from teachers in England and Scotland highlights that establishing effective multi-agency working is complex, takes time to develop and can increase the workload burdens of professionals.

Given the NASUWT is currently engaged on a national trade dispute of which workloads are a key part, the Welsh Government will need to work closely with the NASUWT, other school workforce trade unions and other key stakeholders to develop the IDP. The IDP and the related procedures will need to be trialled and revised if feedback indicates that there are issues in relation to the operation of the practice in terms of ease, efficiency and effectiveness, and workload. The NASUWT will expect workload impact assessments to be an integral part of any trial.

The NASUWT notes the reference in paragraph 3.3 to the IDP being reviewed regularly. Although the need for such regular review is understandable, the workload and bureaucracy implications will need to be scrutinised carefully during the development and trialling phase. It will be important to identify challenges and barriers to effective operation through full engagement with key stakeholders, including teacher unions, so that possible solutions and/or alternative options can be identified.

The NASUWT is concerned that the diagram on page 20 presents an overly simplistic view of the planned options that could belie the reality of the practices that will be required to ensure that needs are met fully and timely.

The NASUWT maintains that there is a risk that the AN support will be treated as a phased approach that becomes increasingly more involved over a period of time. For instance, schools might use the current SEN stepped model, only moving to the next phase or step if the current actions do not work. Some children with an AN that is not SEN-related may require a multi-agency approach promptly, especially where there are safety or welfare issues facing

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the child and/or members of their family. The Union believes that consideration should be given to providing examples that demonstrate that integrated planning should not necessarily be a stepped approach.

In noting the suggestion in paragraph 3.6, that the Support Co-ordinator will normally be the person who is most involved in co-ordinating services for the child or young person, the NASUWT is concerned that there will be an expectation that schools will provide support coordinators. The reforms must not create additional work for teachers and other staff in schools. The resource and workload implications for schools and for certain staff within schools, most notably special education needs co-ordinators (SENCOs) and those with responsibilities for inclusion, will need to be assessed very carefully at the trialling stage.

The NASUWT welcomes, in principle, the person-centred methodology outlined in paragraph 3.9, but, once again, the Union must stress that the approach is likely to be workload and resource intensive.

The NASUWT is clear that the Welsh Government will need to ensure that sufficient resources, including the provision of time, is provided to enable the proper implementation of the person-centred methodology without creating additional workload burdens for teachers and other professionals.

b) agree with the extended age range outlined in section 5?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT welcomes the proposal to extend the age range to 25 and so ensure coherence between services up to the age of 18 and for young people with complex needs between the ages of 19 and 25.

However, the Union maintains that the Welsh Government will need to look

more closely at how children’s services and adult services can work together strategically to ensure the coherence between children’s services and adult services.

Question 3

Do you agree that the planning tool should be a common web-based one across Wales – as described in **section 3**?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT welcomes the proposal in paragraph 3.12 that the IDP should link to other systems such as SIMS and recognises that this approach will be critical to the success of integrated planning.

Question 4

Do you agree that multi-agency working – see **section 4** – should be a requirement in the delivery of this reform proposal, i.e. that the statutory partners of education, health, and social services should be under a legal obligation to play an active part in devising and delivering services for learners with significant and severe and/or complex needs?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT notes that this section focuses on children and young people with significant and severe and/or complex needs.

Although the NASUWT acknowledges fully that great care must be given to meeting the needs of these children and young people by ensuring that agencies work together effectively, it will also be necessary to ensure that the needs of children who fall outside the current legal entitlement framework benefit from multi-agency working.

The NASUWT trusts that the emphasis being given to AN rather than SEN implies that the Welsh Government is intending agencies to work in this way. However, the Union is disappointed to note that the proposals pay little or no attention to multi-agency working to meet the needs of children who do not have profound or significant needs. The NASUWT is concerned that this oversight could lead to the creation of a two-tier rather than a cohesive and integrated system for catering for AN.

The NASUWT notes the references in paragraph 4.2 to the establishment by local authorities of Support Panels to agree service provision and placements and the suggestion that the National Health Service (NHS) should co-operate with local authorities on such panels. Feedback from members across the UK has highlighted situations where the co-operation of the NHS has proved difficult because of competing priorities in terms of funding and provision. If the aims set out in the consultation document are to be realised, then the Union believes that the Welsh Government will need to ensure, rather than suggest, co-operation between health, education and social care.

Of the two options referred to in paragraph 4.5 for co-operation between services on regional level, the NASUWT favours the joint strategic planning and commissioning process, as the Union believes that this should better enable resources to be pooled and targeted to need on a strategic basis. The NASUWT doubts that a consortium-wide Support Panel consisting of budget holders from each agency could deliver the seamless approach that is envisaged.

The NASUWT questions the relevance of the claim made in paragraph 4.7 that there is a lack of consistency across Wales in the proportion of children who are subject to a statement of SEN.

Research on SEN and inclusion commissioned by the NASUWT¹ highlights that SEN and inclusion may be interpreted in different ways and that the SEN Code of Practice recognises the need for interpretation according to context. Therefore, the key issue is that there should be a relationship between the interpretation of SEN and inclusion and the resources allocated to meet children's needs.

As stated elsewhere in this response, the NASUWT recognises that there has been a dramatic decrease in the number of statements issued to pupils and young people over the last decade. The Union maintains that this has resulted from changes to the SEN descriptor and the constantly moving boundaries of inclusion.

Regrettably, the NASUWT believes that economics rather than educational needs has been the main driver for change, and that any perceived lack of consistency stems from inclusion being viewed as the cheaper option.

Where local authorities have embraced inclusion and sought to support most pupils with SEN in mainstream schools, the NASUWT is not convinced that the school workforce has been provided with access to the requisite resources, training and professional development opportunities, or that sufficient regard has been taken of the impact that inclusion has had on class teaching. The focus of the Welsh Government should be on the nature and appropriateness of support for all pupils, including those with statements of SEN, rather than on differences in numbers.

The NASUWT shares the view implicit in paragraph 4.10 that a multi-agency working approach should become the norm for meeting the needs of all children, but is disappointed to note that although there is a recognition of the need to draw together the different schemes for multi-agency working, the means of ensuring that this approach becomes mainstream practice is not

¹ Ellis, S.; Tod, Professor J.; and Graham-Matheson, L. (2008), *Special Educational Needs and Inclusion: Reflection and Renewal*. Birmingham, NASUWT.

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explored in any detail.

The NASUWT is gravely concerned that the current economic climate, with cuts to public services, could have a profound effect on the ability of the Welsh Government to establish multi-agency working without significantly increasing the burdens placed on schools and the other agencies that will need to collaborate and work co-operatively.

The NASUWT is clear that guidance and legal obligation will not be enough to secure the aims of the Welsh Government in terms of meeting the needs of children and young people with AN. Without the provision of sufficient resources, multi-agency working will falter.

Question 5

We describe in **section 6** the proposal to deal with concerns and disagreements in a much more proactive way. Do you agree with what is set out in that section?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT offers a cautious welcome to the proposal to encourage a preventative strategy of mediation and early resolution rather than the current adversarial approach. However, the Union questions whether an increased focus on mediation will actually decrease the number of cases being taken to Tribunal. It is likely that on a number of cases this will simply become another step in the process to be exhausted by parents and carers.

The NASUWT maintains that if the resources allocated to meeting needs and the provision of appropriate support are inadequate, then there is unlikely to be any reduction in the number of cases proceeding to the Tribunal.

Question 6

Section 7 outlines the revised process of appeal to Tribunal. Do you agree with:

a) the expanded remit for the Tribunal?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT finds merit in this proposal.
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b) the proposed requirement to go to dispute resolution before a case can be taken to Tribunal?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT offers a cautious welcome to the proposals, but maintains that there needs to be a detailed and objective assessment of the pressures and demands that could be placed on schools and other agencies where timescales are reduced.

Question 7

Section 8 outlines an aspiration for a much more robust Family Partnership Service to support families and children/young people. We describe how the proposed reforms should reinforce support and active dispute resolution to ensure the need to challenge decisions is minimised. Do you agree with the general principles outlined?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT supports, in principle, the proposals to develop much more robust Family Partnership Services to operate on a multi-agency basis. However, the Union maintains that the effective operation of any partnership

will depend on the partners having clear roles and responsibilities and being resourced and supported adequately to discharge their roles and responsibilities.

Likewise, the NASUWT supports, in principle, the proposal to develop a charter of rights but is keen to emphasise that the charter must be realistic in its construction, with the relevant partners and the various agencies being provided with the appropriate level of resourcing to fulfil their responsibilities.

The NASUWT would expect to be involved in the development of the charter of rights.

Question 8

Section 9 sets out how we propose to build in quality assurance to the proposed system. Do you agree with these proposals?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

The NASUWT recognises the importance of guidance and the proposals to replace the current SEN Code of Practice with an AN Code of Practice that will ensure that local authorities, schools and other providers, including the NHS, make appropriate provision for children and young people with AN.

However, the Union maintains that the status of the guidance will be critical as this will determine whether compliance by the various agencies will either be an expectation or a requirement. The NASUWT favours the latter approach, but is clear that any requirement in terms of compliance must apply equally to the various agencies, including the NHS, rather than being limited to local authorities and schools.

The intention to establish a Provision Mapping system is welcomed, but it will be vital that this system is developed with the active involvement of all

relevant partners and must include a careful examination of the barriers to effective implementation.

The NASUWT notes the reference in paragraph 9.5 to schools maintaining an AN quality assurance system. The Union is concerned that this initiative has the potential to increase bureaucracy and workload. It is vital that any such system is streamlined and impact assessed in terms of both bureaucracy and workload for school.

The NASUWT will expect to be consulted fully and engaged in the development of the quality assurance system.

The NASUWT notes the reference in paragraph 9.6 to the introduction of an AN Co-ordinator (ANCo) post in every school in Wales and the suggestion that the post-holders will need to be trained to Master's level. Although the Union welcomes the recognition that an ANCo post-holder should be highly skilled, the Welsh Government would need to ensure that such a requirement was equality impact assessed in relation to the ability of teachers to access the training and development required to study for a Master's qualification.

Further, the vagueness and lack of clarity surrounding the roles and responsibilities associated with the ANCo post is all too apparent, given the suggestion that more specific guidance will be provided in the future. Of paramount concern to the NASUWT is how the ANCo posts would fit with the current SENCO posts.

The NASUWT maintains that all training and development in relation to the ANCo posts must take place within directed time and that any requirements in this regard would only apply to new post-holders. The Union would not expect such requirements to apply to teachers currently working as SENCOs, or to those currently working as SENCOs who would have the right to be slotted into an ANCo post should the need arise.

The NASUWT would expect to be consulted fully on the implications of

establishing ANCo posts before their introduction.

Question 9

Do you agree with the proposal to develop Provision Pathways as described in **section 9** paragraphs 9.8 and 9.9?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

In recognising the merit in developing Provision Pathways that will clearly define roles, responsibilities and minimum standards for service provision relating to each level of need pathways, the NASUWT believes that the focus should be on the commitment given in paragraph 9.10 to ensure that additional specialist resources to meet the AN of those children and young people with the greatest need are allocated fairly, with transparency and consistency across Wales. However, the NASUWT is concerned at the lack of reference to sufficiency in terms of the additional specialist resources.

Question 10

There is a specific reference to the changes proposed for post-16 specialist placements as outlined in **section 10** – the transfer of this responsibility to local authorities. Do you agree in principle with this change?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The NASUWT welcomes, in principle, the plan to achieve coherence across school and post-16 provision by requiring the local authority to take responsibility for arranging assessments of education and training needs in schools and post-16 provision.

Although the NASUWT notes that the Welsh Government plans to transfer

funding for this work to schools, there will be a need to ensure that there are no additional hidden costs involved in undertaking the work involved. The Union is clear that an assessment of the funding requirement to enable local authorities to meet their obligations and responsibilities must be made before the implementation of this proposal.

Question 11

This area of policy is one of the most important for the most vulnerable children and young people in our society and effective planning, provision of assessed needs support and the monitoring of outcomes is one of the most important elements. The consultation document covers the main principles of the SEN reform. Do you agree that the key elements have been addressed in this document?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

Although the importance of the area of policy described in this consultation is freely acknowledged by the NASUWT, and that many of the key elements of catering for the AN of children and young people have been addressed, the Union remains concerned by the apparent failure to recognise the funding implications that will be vital to the success of the proposals.

The NASUWT does not accept that adopting the policies and practice described in the consultation document will be cost-neutral or lead to savings being made. Indeed, the NASUWT cautions the Welsh Government against proceeding on such a premise, as this could lead to a breakdown in the multi-agency working and/or a failure to meet the needs of some of the most vulnerable children and young people in our society.

Question 12

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

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Please see the response to question 11 above.



Chris Keates

General Secretary

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Paper 4 : Annex E

1. The NASUWT welcomes the opportunity to comment on the proposals to reform how school term dates are set for all maintained schools in Wales.
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. In submitting this response, the NASUWT reminds the Welsh Government that the contractual school term dates are enshrined in the *conditions of service for school teachers in england and wales* (the Burgundy Book) and comprise: the Summer term from 1 May to August 31; the Autumn term from September 1 to December 31; and the Spring term from January 1 to April 30.
4. Neither the Welsh Government nor local authorities have the power to alter the contractual term dates.
5. Further, the School Teachers' Pay and Conditions Document (STPCD) specifies the number of days on which teachers must be available for work, the number of days on which they may be required to teach pupils and perform other duties, and the number of days on which they may only be required to perform other duties.
6. The Welsh Government can, and has, altered the number of days on which teachers may only be required to perform other duties, but cannot alter, unilaterally, the number of days on which teachers must be available for work.
7. In practical terms, the dates on which schools are open for teachers and pupils are determined by the holiday patterns that are set by local authorities in Wales. For the purposes of this response, the NASUWT is willing to recognise these dates as the 'school term dates'.

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8. The NASUWT has been at the forefront of attempts to establish common school term dates for many years and recognises the arguments proffered for harmonisation.
9. However, the NASUWT is clear that harmonisation must be based on maintaining a three-term year, with half-term breaks of at least a week, a break of at least two weeks at the end of the Autumn and Spring terms, and a break of at least six weeks at the end of the Summer term.
10. The NASUWT is concerned that the changes to legislation, as proposed, could provide either governing bodies, local authorities or the Welsh Ministers with powers to alter the three-term year arrangements and seeks assurances that safeguards will be built into the future Bill to ensure that the three-term year and holiday pattern is maintained.

SPECIFIC COMMENTS

11. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

Question 1 – Do you agree with our first proposal that local authorities and the governing bodies of voluntary aided and foundation schools in Wales should have the responsibility to take all reasonable steps to reach agreement regarding term dates for each school year?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

Yes, but only on the basis of maintaining a three-term year with half-term breaks of at least a week, a break of at least two weeks at the end of the Autumn and Spring terms, and a break of at least six weeks at the end of the Summer term.

The NASUWT notes the absence in the proposals of any reference to

consultation with the school workforce trade unions in the process of reaching agreement on the term dates for each school year.

The NASUWT reminds the Welsh Government that as the holiday pattern is a contractual arrangement, the employer, that is the local authority and/or the school governing body, would have to reach agreement with the school workforce trade unions before implementing any change if the prospect of dispute is to be avoided.

Question 2 – Do you agree with our second proposal that the Welsh Ministers are given the discretion to effectively direct local authorities and appropriate governing bodies on the setting of school term dates, should they believe that it is necessary to do so?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

Yes, but only on the basis of maintaining a three-term year with half-term breaks of at least a week, a break of at least two weeks at the end of the autumn and spring terms, and a break of at least six weeks at the end of the summer term.

The NASUWT notes the absence in the proposals of any reference to consultation with the school workforce trade unions before any decision by the Welsh Ministers to exercise control over, or intervene in, the setting of terms dates is taken.

The NASUWT reminds the Welsh Government that the holiday pattern is a contractual arrangement and that the Welsh Government has no employer function in relation to the school workforce. Consequently, any decision by the Welsh Ministers to exercise control over an employer in terms of the setting of term dates would have to be based on a collective agreement reached with the trade unions representing the school workforce. This would require consultation and provision would need to be made for the same in the legislation.

Question 3 – Do you agree with our third proposal that local authorities and governing bodies are to demonstrate that they have agreed term dates?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

The NASUWT is not sure if this proposal is free-standing, or if it is intended to complement the first two proposals by prescribing how local authorities and governing bodies are to discharge the responsibility outlined in the first proposal?

In any event, once local authorities and governing bodies have demonstrated that they have agreed term dates across all local authorities, the fourth proposal allows Welsh Ministers to use the ‘power to direct’ enshrined in the second proposal.

Consequently, the NASUWT has some difficulty in understanding the relevance and purpose of the third proposal, other than to prescribe the bureaucracy for reaching agreement on the term dates.

Question 4 – Do you agree with our view on how the process of local authorities and governing bodies demonstrating that they have agreed term dates could work? This is set out in paragraphs 4.6–4.9 of the consultation document.

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

As stated in answer to Question 3, the NASUWT has some difficulty in understanding the relevance and purpose of the third proposal, other than to prescribe the bureaucracy for reaching agreement on the term dates.

Again, the absence of any reference to the need to consult with the trade unions representing the school workforce is noted and the Welsh Government is reminded that as the holiday pattern is a contractual arrangement, the

employer, that is the local authority and/or the school governing body, would be required to reach agreement on any change prior to implementation.

Further, the NASUWT maintains that the true purpose of the third proposal is revealed in the fourth proposal, as this seeks to provide Welsh Ministers with unfettered powers over school holidays.

Question 5 – Do you agree with our fourth proposal that the Welsh Ministers’ power to direct local authorities and relevant governing bodies should not be limited to cases where term dates cannot be agreed, and should allow for varying term dates to be set for different types of school or local authority areas (or parts of local authority areas)?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

The NASUWT is concerned that the purpose of the fourth proposal, as outlined in paragraph 4.10, is to allow Welsh Ministers to control school term dates, regardless of whether or not agreement on harmonisation has been reached.

The NASUWT recognises the insidious nature of this proposal, as it attempts to provide Welsh Ministers with powers to vary agreed holiday patterns on the whims and fancies of government. Indeed, it can be argued that providing a power that could be applied in specific areas contradicts the arguments proffered for the harmonisation of school term dates.

Providing Welsh Ministers with powers to alter school holiday dates because of events such as the Ryder Cup or, possibly, inclement weather or volcanic ash, is not acceptable.

Again, the NASUWT reminds the Welsh Government that the holiday pattern is a contractual arrangement and that the Welsh Government has no employer function in relation to the school workforce. Consequently, any decision by the Welsh Ministers to exercise control over an employer in terms of the setting of term dates would have to be based on a collective agreement

reached with the trade unions representing the school workforce. This would require consultation. Provision would need to be made for the same in the legislation.

The Welsh Government should not underestimate the potential for dispute that this proposal raises.

Question 6 – Do you agree with our fifth proposal that the Welsh Ministers should be given a regulation-making power to allow them to prescribe the detail of how consultation on the use of their powers relating to school term dates must be carried out?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Comments

The NASUWT has repeated the need for consultation throughout this response and therefore welcomes this proposal.

However, given that the holiday pattern is a contractual arrangement, the NASUWT maintains that changes cannot be imposed by a governing body, local authorities or the Welsh Government, unless agreement has been reached with the school workforce trade unions.

Consequently, the arrangements for consultation must not only be meaningful, but must recognise the 'need to reach agreement', rather than being based on the principle of 'with a view to reaching agreement'.

Question 7 – Equality Impact Assessment.

We would welcome your views on the potential impact of all of our proposals on:

- a) disability
- b) race
- c) gender and gender reassignment
- d) age
- e) religion and belief and non-belief
- f) sexual orientation
- g) human rights.

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The largest teachers' union in Wales and the UK
Yr undeb athrawon fwyaf yng Nghymru a'r DU

Please enter your views here:

The NASUWT believes that the proposals could have a negative impact on many of the areas identified, but maintains that the duty to undertake an equality impact assessment rests with the Welsh Government.

The NASUWT trusts that the architects of the proposals have considered issues such as the ability to celebrate religious holidays, the ability to reconcile carer responsibilities with career development, the ability of those with disabilities to adapt agreed working arrangements to changing circumstances, and the ability to pursue personal interests to enhance well-being and quality of life.

The NASUWT maintains that the key to addressing equality issues in relation to school term dates is through the establishment of effective, fair and consistent leave of absence arrangements and suggests that this is reflected in the Welsh Government's equality impact assessment.

Question 8 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

The NASUWT notes that the anticipated outcome is that the childcare problems experienced by many families in Wales, as a result of school term dates not being harmonised, would no longer be an issue.

Although the NASUWT would not disagree with the statement, it would only hold true if harmonisation was achieved for all maintained school in Wales. Regrettably, as constructed, the proposals would provide Welsh Ministers with the power to determine different school holidays in a specific area thus negating harmonisation.

The NASUWT welcomes the recognition by Welsh Ministers that there would be a need to consult before the exercise of their powers in relation to school term dates but reminds the Welsh Government of the need to reach agreement with the trade unions representing the school workforce, regardless of the views of other stakeholders, if dispute is to be avoided.

The NASUWT will be prepared to offer further comments on the equality impact assessment statement, following receipt of the same from the Welsh Government.



Chris Keates

General Secretary