
Ymateb i Ymgynghoriad / Consultation Response

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Pwnc / Subject:	Representatives for young people, and parents of children, lacking mental capacity

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Response

Introduction

Estyn supports the general principles of the proposed draft ALN Code Chapter 31: Representatives for young people, and parents of children, lacking mental capacity.

We recognise the need for this provision in line with the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

We also recognise the importance of ensuring that the Welsh language is not treated less favourably than the English language. We recognise the importance of having representatives and protocols that are able to support young people and parents of children in their language of choice, particularly for those with ALN. Children, young people and parents should have opportunities to express their views, wishes and feelings confidently and clearly in their language of choice in order to secure appropriate care and support. The proposals could be strengthened further in paragraph 1.3 of the draft code chapter by adding an explicit reference to Welsh as the possible language of choice: *The importance of them being provided with the information and support necessary to enable participation in those decisions in Welsh or English.*

Consultation questions

Question 1 – Are the provisions for interpreting a child’s parent as the representative, or both the parent and the representative, in instances where that parent lacks capacity, appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

This provision further supports Article 12 of the United Nations Convention of the Rights of the Child which states that public services and governments are to provide children with the freedom and opportunities to express their views and that the service of government must consider their views in a meaningful way.

This chapter reinforces the importance of children being supported by their parent or representative to make contributions when decisions are being made about their Additional Learning Needs. Their views, wishes and feelings should be duly considered. Children and their parents or representatives should be provided with the information and support necessary to enable participation in those decisions.

Question 2 – Are the provisions for interpreting a young person as the representative, or both the representative and the young person, in instances where that young person lacks capacity, appropriate?

Yes	✓	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

We agree that the provisions for interpreting a young person as the representative, or both the representative and the young person, in instances where that young person lacks capacity, are appropriate.

The information provided within this code chapter enables young people lacking mental capacity to participate as fully as possible in the decision making process and to exercise their rights as necessary. Appropriate supportive representation ensures that a young person’s rights are realised in their best interests.

Question 3 – The provisions in the draft regulations and code chapter allow for a young person’s parent, where the young person does not have a representative (as defined in regulation 2), to act as their representative. Does this proposal strike the right balance between allowing individuals to make their own decisions, and allowing representatives to make decision on behalf of those individuals who are lacking capacity?

Yes	✓	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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Supporting comments

In the case of a parent acting as a young person’s representative, we acknowledge the code chapter’s general principles of supporting the young person to make their own decisions. Most parents will make decisions based in the best interests of the young person. They should have a good understanding of the young person’s needs and should know how best to address any concerns.

Question 4 – Do you have any other comments related to the draft regulations or code chapter?

No further comments.

Mandatory questions

Question 5 – We would like to know your views on the effects that representatives for young people, and parents of children, lacking mental capacity would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Supporting comments

<ul style="list-style-type: none">i)ii)	<p>We acknowledge linguistic equality between Welsh and English in all provision. We recognise the importance of having representatives that are able to support young people and parents of children in their language of choice. Communication in one's mother tongue is particularly important when supporting children and young people with ALN. Providing appropriate support by professionals in the language of choice is central to meeting children and young people's ALN needs with respect and dignity. Children, young people and parents should have opportunities to express their views, wishes and feelings confidently and clearly in their language of choice in order to secure appropriate care and support.</p> <p>Accessible information and resources should be provided in both Welsh and English in order to support children, young people and their parents or their representatives. We believe that it is important that all relevant bodies have equitable provision through the medium of English and Welsh. Local authorities should ensure adequate provision of Welsh speaking representatives and, if required, Welsh speaking tribunal members.</p>
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Question 6 – Please also explain how you believe the proposals could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Supporting comments

We welcome the opportunities for legal linguistic parity and provision in all matters for children and young people with ALN.

The proposals could be strengthened further in paragraph 1.3 of the draft code chapter by adding an explicit reference to Welsh as the possible language of choice:

The importance of them being provided with the information and support necessary to enable participation in those decisions in Welsh or English.

Question 7 – 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.

No further comment

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: