



IMPROVING EDUCATION  
THROUGH RESEARCH

## **#SERAConnects: Legislation & policy context around school exclusions**

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# Missing Out: Understanding School Exclusions

- ▶ A multi-disciplinary ESRC-funded project across the four UK jurisdictions (University of Oxford, Cardiff University, London School of Economics, Queen's University Belfast and the University of Edinburgh).
- ▶ The overarching aim of this project is to provide a comprehensive and multi-disciplinary view of the different policies, practices and costs of formal, informal and unlawful school exclusions across the UK.
- ▶ Engaging directly with professionals at school, local authority and jurisdiction government level, the third sector as well as with disadvantaged and excluded pupils and their families.



# The legislative and policy context around school exclusions

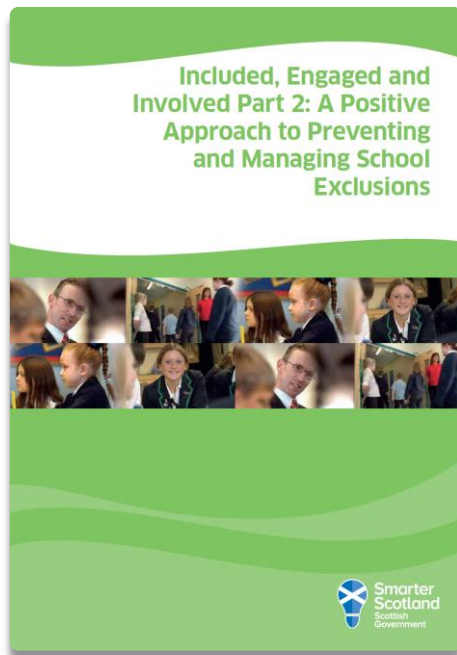
Key research questions:

- ▶ **RQ 1.** What are the dominant political discourses and legal frameworks underpinning school exclusion policy in the four UK jurisdictions? How has each jurisdiction's approach been shaped since devolution in the UK?
- ▶ **RQ 2.** What are the key school exclusion policy levers and drivers in the four UK jurisdictions?
- ▶ **RQ 3.** How do school exclusion policies and legal frameworks relate to those concerned with diversity and inclusion (including discrimination) and wider social care, youth justice and health policies?
- ▶ **RQ 4.** How accurate is the overall picture of legal rights and obligations given to school exclusion decision-makers and stakeholders?

## Scotland: legislative overview

- ▶ Children and young people can either be excluded on a temporary basis or 'removed from the register'.
- ▶ The right to exclude is devolved to Headteachers by councils but decision-making must also involve other professionals and outside agencies such as social work where a child requires extra support.
- ▶ The local authority is responsible for the provision of education for the child/young person during the exclusion and schools must keep a record of all exclusions.
- ▶ An appeal may be made to the Education Appeal Committee, which is setup by each education authority. A further appeal may be made against the outcome of the first appeal to the Sheriff court.

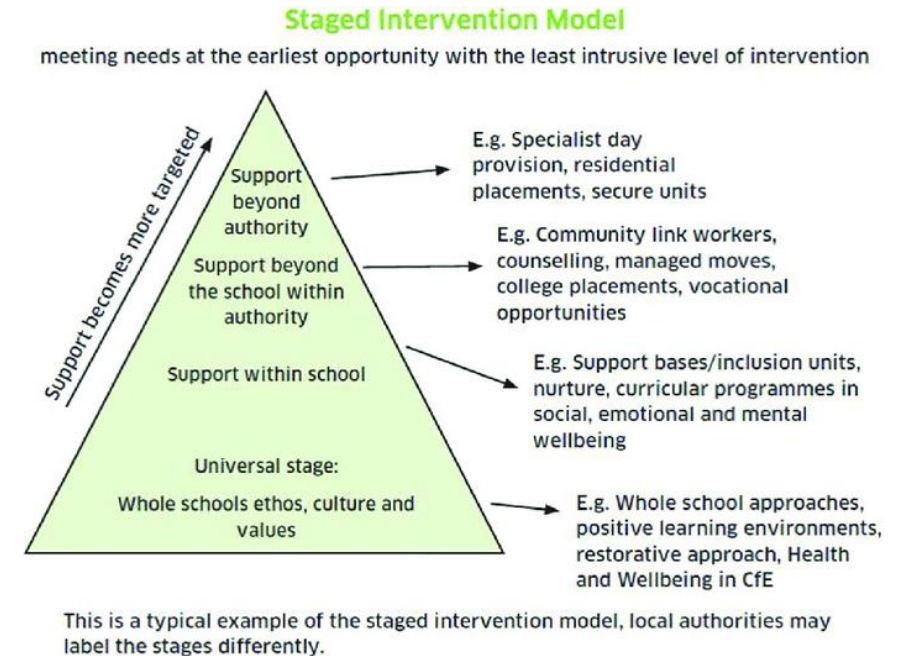
# What are the dominant discourses around school exclusion?



- ▶ The national guidance on school exclusion is underpinned by a focus on **children's rights and participation** and **supporting and improving wellbeing** of children and young people and the whole school community.
- ▶ *"Exclusion should only be used **as a last resort**. It should be a **proportionate** response where there is no alternative and it is important that the views of the child or young person and those of their parent(s) are taken into account".*

# What are the key policy levers and drivers?

- ▶ Local authorities and schools provide support in mainstream school settings within the mainstream class, in designated bases/units within schools and through targeted support outwith mainstream settings.
- ▶ Provision is underpinned by a Staged Intervention Model focused on meeting young people's needs at the earliest opportunity with the least intrusive form of intervention (*Included, Engaged and Involved Part 2*).
- ▶ Schools use a wide range of approaches to 'encourage positive behaviour and relationships' including nurturing approaches, restorative approaches and peer mentoring (*Behaviour in Scottish Schools Research 2016*).
- ▶ Effective partnerships between young people, their parents, schools and the public and voluntary sector.



# How is the problem of school exclusion understood?

- ▶ As a consequence of socioeconomic deprivation

*“Schools need to take account of how a range of factors may be impacting on children and young people’s behaviour and be aware that exclusion can be an additional stress factor”* (School exclusions national guidance)

- ▶ Affecting young people with particular needs (with an additional support need, care experienced children and young people)
- ▶ Relationships as key to managing behaviour

*“All behaviour is communication”*

Thank you

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# The school exclusion legislation and policy context in England

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*SERAConnects: Legislation and policy context around school exclusions*



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# England: Legislative overview

- Section 51A(10) of the Education Act 2002
- The current statutory guidance states that a decision to exclude a pupil permanently should be a “last resort” and “should only be taken:
  - in response to a serious breach or persistent breaches of the school's behaviour policy; and
  - where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.” (Department for Education 2017: pages 6 and 10)
- The governing statutory provision on permanent exclusion ‘provides a discretionary regime within which decision-makers exercise “supported autonomy”’ (Ferguson 2019:7).

# England: Legislative overview

- The Local Authority are responsible for finding provision for the pupil from the sixth day following a permanent exclusion. The governing board of a school retains responsibility for arranging alternative provision for a pupil who is issued a fixed period exclusion lasting longer than five days (Department for Education 2017).
- Governing boards have a duty to consider an exclusion
- Parents have a right to an Independent Review
- In cases where there is an allegation of discrimination, parents may bring a claim under the Equality Act 2010 to the First-tier Tribunal (disability related) or the County Court (other types of discrimination) (Department for Education 2017).

# Policy drivers and dominant discourses: 2010 to 2021

- Headteachers have a right to exclude

*“Tackling poor behaviour and raising academic standards are key priorities for the coalition government. We will back head teachers in excluding persistently disruptive pupils, which is why we are removing barriers which limit their authority” (Nick Gibb quoted in Guardian 2011).*

- Improving the quality of alternative provision and the education of those who are excluded
  - Accountability

# Our Plan: Conservative Manifesto 2019

“We will back heads and teachers on discipline. We will expand our programme to help schools with the worst behaviour learn from the best – and back heads to use exclusions.”

“We will expand ‘alternative provision’ schools for those who have been excluded. We will also deliver more school places for children with complex Special Educational Needs. We will intervene in schools where there is entrenched underperformance.”

(<https://www.conservatives.com/our-plan/schools>)

# Policy drivers and dominant discourses: 2010 to 2021

- *“It is unlawful to exclude for a non-disciplinary reason”*  
(Department for Education 2017:9)
  - Off-rolling
- Reduce preventable exclusions
- *Upstreaming*

# Key policy levers

- Legislative changes
- Issuing of behaviour guidance
- The use of experts and advisors
- Behaviour Hubs
- Ofsted inspections

# How is the problem of school exclusion understood?

- Exclusion disproportionately affects certain groups
- Exclusion leads to negative individual and societal consequences
- Yet behaviour is largely decontextualized
  - Behaviour as choice versus behaviour as communication
- Unlawful exclusion is the problem
- Not as a problem but a solution?



# References

- Department for Education. (2017). *Exclusion from maintained schools, academies and pupil referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion*. London: Department for Education.
- Ferguson, L. (2019). Children at risk of school dropout. In: J.G. Dwyer, ed. *Oxford Handbook of Children and the Law*. Oxon: Oxford University Press.
- Harrison, A. (2011). *Fewer school children expelled from England's schools*. *Guardian*. [Online]. Available at: < <https://www.bbc.co.uk/news/education-14324743> > [Accessed 01.12.2021]

# Thank you

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# The legislative and policy context around school exclusions: Wales

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Research funded by



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# The wider policy context of Wales: 'clear red water'

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Wales	England
Universalism	Diversification
Ethic of participation	Ethic of consumerism
Cooperation is better than competition	Competition is necessary to drive standards
Progressivism	Cultural restoration

## **Dominant discourses around school exclusion:**

- The rights of the child
- The impact of poverty
- Disengagement with school

## **Policy levers to reduce exclusions:**

- Legislative framework
- Commissioning research & setting targets
- School categorisation and incentives
- Providing guidance and resources

# Legislative frameworks

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The need to address school exclusion in Wales is framed by **the Equality Act (2010)**, the **UN Convention on the Rights of the Child** and the **Wellbeing of Future Generations (Wales) Act** this requires all public authorities in Wales to consider the long-term impact of decisions on people (especially children)

- The decision to exclude' should be only taken:
  - 'In response to serious breaches of the school's behaviour policy
  - If allowing the learner to remain in school would seriously harm the education or welfare of the learner or others in the school'

# Commissioning research and setting targets

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## Commissioning Research

- In 2011 a report commissioned by WG **Barnardo's Cymru and Snap Cymru** looked at unlawful exclusions
- In 2013 the **University of Edinburgh** completed research on **EOTAS and school exclusion**.
- In 2020 WG commissioned research was released on a review of **LA commissioning arrangements for EOTAS provision**.

## Setting Targets

- The Learning Country set out a **target** for the **reduction of permanent exclusions** by a third.
- The latest guidance on school exclusions sets out **individual targets** for individual action plans and **reintegration into mainstream education**.

# School categorisation & incentives for schools

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## Setting Targets

- Welsh Government launched a 'banding' system in 2012 known as the **National School Categorisation System** this ranks every primary and secondary school in Wales annually using a traffic light system.
- The Welsh Government says this is to 'identify the schools that need the most **help, support and guidance** to improve'.

## Incentives for Schools

- The **Pupil Deprivation Grant (PDG)** is a pot of funding aimed at **improving outcomes**, for deprived learners.
- New legislation will mean children and young people, aged 0-25, with **additional learning needs (ALN)** will need to have their **needs assessed, planned and monitored**.
- A **whole-school approach to mental health and wellbeing** building on work around Adverse Childhood Experiences (ACEs).



# Providing guidance

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Welsh Government Guidance on **Exclusion from Schools and Pupil Referral Units:**

- Only a **head teacher** or **teacher in charge of a PRU** can exclude a pupil on a fixed term or permanent basis much of the guidance is aimed at them.
- The guidance also outlines the role for **school governors** and **management committees** of PRUs on the exclusion process.
- Most of the guidance for local authorities covers meeting the **individual needs** of excluded learners and **reintegrating** them into ideally **full-time mainstream school** wherever possible.

For Parents and Young People

- **Children's Commissioner** and the **Ombudsman** provides guidance for excluded children and their parents. Parents can also go to the Ombudsman to appeal a decision to exclude.
- WG have produced an easy read booklet for young people '**Are you Being Excluded from School**' this explains the exclusion and appeals process to **children and young people**.



## Concluding comments: Tensions and silences

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- Do the policy levers encourage unofficial exclusionary practices which may be just as, or even more, damaging than official exclusions?
- How can the problems caused by poverty be addressed by education and other welfare professionals?
- Where are the silences? Whose rights are being prioritised?



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# Thank you

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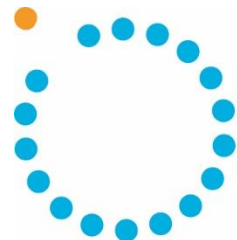
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