

Number: WG39220



Welsh Government
Consultation Document

Consultation on Draft Regulations

The Children Act 2004 Education Database (Wales) Regulations 2020; &
The Education (Information about Children in Independent Schools) (Wales)
Regulations 2020

Date of issue: 30 January 2020
Action required: Responses by 22 April 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Title of consultation

Overview

The Welsh Government is committed to ensuring all children in Wales receive a suitable education. This consultation is seeking views on draft regulations that will enable LAs to compile a reasonably complete list of all children in the local authority area and the education that they are receiving.

How to respond

Responses to this consultation should be emailed/posted to the address below to arrive by 22 April 2020 at the latest.

Email: Completed consultation response forms can be sent to

WELLBEINGshare@gov.uk

WELLBEINGshare@llyw.cymru

Please include “**Draft regulations consultation – WG39220**” in the subject line.

Post: Completed consultation response forms can be sent to;

Draft Regulation Guidance Consultation

Learner Inclusion Team

Support for Learners Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government’s website at gov.wales/consultations

Contact details

For further information:

Welsh Government

e-mail: WELLBEINGshare@gov.wales



@WG_Education



Facebook/EducationWales

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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Ministerial foreword

In January 2018¹, I announced my intention to use existing powers found in section 29 of the Children Act 2004 to require:

- each local authority to establish and maintain their own database to assist them in identifying children not on any maintained school roll, not on any education other than at school (EOTAS)roll or independent school roll and not receiving a suitable education;
- Local health boards (LHBs) to disclose to LAs certain specified non-clinical information about a child who is ordinarily resident in a local authority area; and
- Independent schools in Wales to disclose data on pupils registered with them with the LAs.

The draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will provide the legal framework for these proposals.

These Regulations will enable each local authority to compile a reasonably complete list of all children of compulsory school age in their area, to ensure they are receiving a suitable education regardless of where that takes place. This will be achieved through the cross-comparison of education data, local health board data and data from independent schools to produce a list of children within the local authority area

The Regulations are not in isolation and are set within the wider context of education reform as set out in *Education in Wales: Our National Mission*² – the Welsh Government’s action plan for 2017-21- which sets out the action required to fulfil our commitment to the success and wellbeing of every learner, regardless of background or personal circumstance.

This consultation follows on from the consultation on the statutory guidance for LAs on home education and the handbook for home educators that took place from 29 July to 25 October 2019. In that consultation we asked a specific question about the proposals for the database and the responses have helped inform this consultation on the draft regulations. But let me be clear, the database regulations do not interfere with the parental choice to home educate.

This consultation provides an opportunity for everyone to have their say. A number of respondents to the statutory guidance consultation highlighted various concerns about the issue of a database. It would be helpful if respondents could elaborate on what their specific concerns are in order to consider how best to address these.

I look forward to receiving your views on the proposal.

Kirsty Williams AM
Minister for Education

¹ <https://record.assembly.wales/Plenary/4901#A10000068>

² <https://gov.wales/sites/default/files/publications/2018-03/education-in-wales-our-national-mission.pdf>

1. Introduction

This consultation seeks views on draft regulations that will require each individual local authority (LA) to establish and maintain its own database of all compulsory school age children in their area.

The draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will provide a legal framework for the lawful sharing of information, express consent will not be required.

Under section 436A of the Education Act 1996³ (“the 1996 Act”), LAs have a duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education.

Section 436A of the 1996 Act provides that:

(1) A local authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but: —

(a) are not registered pupils at a school, and

(b) are not receiving suitable education otherwise than at a school.

(2) In exercising their functions under this section a local authority must have regard to any guidance given from time to time by the Secretary of State.

(3) In this Chapter, “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

The intention of the database regulations is to assist LAs to meet their duty under section 436A of the 1996 Act.

At the moment LAs have no reliable or consistent method for identifying all compulsory school aged children in their area who have never been to school, and or are missing education. There are existing methods in place for LAs to become aware of children not

³ <https://www.legislation.gov.uk/ukpga/1996/56/section/436A>

currently known to the LA and or missing education e.g. live birth register, school deregistration notification. The live birth register does not assist when children have changed address or moved away or into a LA; equally, school deregistration information only captures those children who have attended mainstream school.

We have explored these methods with LAs and we have concluded these methods do not provide reliable and consistent methods for identifying children.

It is a feature of modern societies for citizens to be on a number of databases⁴, across a number of agencies with responsibility for universal and targeted services, including (but not limited to), the live birth register, council tax, the electoral roll, Driver and Vehicle Licensing Agency (DVLA) and Her Majesty's Revenue and Customs (HMRC) for those in receipt of any benefits

The introduction of a requirement on each LA to establish a database of all compulsory school aged children in their area will assist LAs in identifying all children in their area. Without knowing who is in their area, a LA is unable to assess who is not receiving a suitable education. The database should, therefore, assist LAs to comply with functions under section 436A of the 1996 Act.

The regulations should ensure there is clarity and a consistent approach about the activities that each local authority must undertake to populate its own database.

The draft regulations will impose on LHBs and Independent Schools a requirement to disclose to the LA information (non-clinical for LHBs) which the body holds in relation to a child or young person of compulsory school age. The database will comprise of a reasonably complete list of all compulsory school age children regardless of where they are educated. **This will not be a central all Wales database – each LA will maintain their own database.** This is not a tracking tool – it is intended the data disclosure will take place once a year and will provide as accurate as possible data at a particular point in time. This will not be a live database.

⁴ According to the Collins dictionary definition a database is “a collection of data that is stored in a computer that can easily be used and added to”.

2. The Regulations

Section 29 of the Children Act 2004⁵ allows for regulations to be made that will require LAs to develop and maintain a database of all compulsory school age children in their area. The regulations establish the legal basis for the sharing of data. The regulations have no criminal element in respect of parents, **the regulations place the requirement solely on LA and LHBs.**

The regulations will require each LA to maintain and populate a database of all compulsory school aged children in their area, which will help LAs with the identification of children in their areas who are not currently known to them and / or missing education.

The regulations will help to ensure that children and young people in Wales receive a suitable education in line with Article 28 of the United Nations Convention on the Rights of the Child⁶ and Article 2 of Protocol 1 to the European Convention of Human Rights. In doing so, the Welsh Government reinforces its commitment to ensure every child and young person in Wales receives an education that equips them with the skills and knowledge to fulfil their potential.

3. Information held on the database

The regulations will specify the following information of children of compulsory school age (regardless of where they are educated) to be held on the database:

- the child's name
- the current address of the child
- the child's gender
- the child's date of birth.

⁵ <http://www.legislation.gov.uk/ukpga/2004/31/section/29>

⁶ https://downloads.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child-uncrc.pdf?_ga=2.160711869.1208858048.1575366836-1339842348.1571230189

- the name and contact details of any parent of the child.
- the name and contact details of any educational establishment attended by the child.
- where the child is receiving education otherwise than at an educational establishment the name and contact details of a person or body providing such education; and
- where the child has died the date of the child's death

This information will enable the cross matching of data from LHBs and independent schools with that of the LA. The regulations will require information that can only be used to identify a child of compulsory school age ordinarily living in a LA area.

The Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will require Welsh Independent Schools to disclose to a LA information regarding learners registered at their establishment.

4. Data protection and access

In developing the proposals, we have considered issues and concerns regarding data security. Discussions have been ongoing with Welsh Government data protection officials and we are required to complete a Data Protection Impact Assessment (DPIA). As a result Welsh Government officials have engaged with the Information Commissioner's Office (ICO) regarding the development of the DPIA and will continue to do so throughout this process.

The data held on the database will be restricted to that which is proportionate and reasonable to ensure that a LA has a reasonably complete database of all children of compulsory education age in the LA area and where they receive their education. It will assist the LA in undertaking its section 436A functions under the 1996 Act. **There will be no requirement on LHBs to share clinical/medical information.** The data will not be routinely shared, and if data is shared it will require a purpose, a legitimate aim, such as ensuring a child or young person's wellbeing. This will be subject to a meticulous and informed assessment (proportionality) to ensure the data sharing is not incompatible with data protection legislation and other legal protections conferred on children, young people and parents.

The regulations will not incur additional risks to the protection of children's data. LAs already hold significant data on the majority of children in their areas and have existing systems in place to keep this information secure. All LAs have comprehensive 'Retention and Disposal' schedules. These record management standards are essential if a LA is to meet its legislative responsibilities, for example compliance with Data Protection, Freedom of Information and the Local Government acts and other obligations.

Access to the database will be restricted to LA officers who require access to do their job in respect of school admissions and attendance, duties in relation to welfare of children and additional learning needs.

5. Human Rights

We have considered and will continue to take into account any potential human rights issues in relation to the regulations. The regulations will not interfere with a parent's right to educate their children in conformity with their own religious and philosophical convictions. The regulations are directed at LAs, and do not place any new requirements on parents. We believe the regulations are proportionate since they support a legitimate aim which is to help to ensure that a child's right to a suitable education is achieved.

6. Conclusion

In order to undertake certain education functions, LAs need to know certain details of children they are responsible for in their area. The purpose of these regulations is to require each local authority to establish and maintain their own database of all compulsory school age children in their area. The additional requirement on local health boards and independent schools to disclose information to the LA will assist the compilation of a reasonably comprehensive database of all children of compulsory school age in their area.

