



Llywodraeth Cymru
Welsh Government

Welsh Government Integrated Impact Assessment Summary

Title of proposal:

Draft Regulatory Impact Assessment for
The Children Act 2004 Database (Wales) Regulations 2020
&
Education (Information about Children in Independent Schools) (Wales) Regulations 2020

Department:

Education and Public Services

Cabinet Secretary/Minister responsible:

Minister for Education, Kirsty Williams AM

Start Date:

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What action is the Welsh Government considering and why?

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The Welsh Government has developed The Children Act 2004 Database (Wales) Regulations 2020 to require each local authority (LA) to maintain and populate a database of all compulsory school age children in their area. In addition the regulations will require local health boards (LHBS) to disclose to a LA non-medical information to assist them in identifying children who are not on a school roll, education otherwise than at school (EOTAS) register and not receiving a suitable education. In addition the Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will require independent schools to disclose to a LA information regarding learners registered at their establishment.

These regulations will provide the lawful basis for the disclosure of specified information from local health boards and independent schools with local authorities. In establishing a database each LA will be better placed to fulfil their duty to identify all children in their area and to ensure they are receiving a suitable education. This supports Article 28 of the United Nations Convention on the Rights of the Child (UNCRC) and Article 2 of the European Convention of Human Rights (ECHR) and in doing so reinforces the Welsh Government 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.

Under section 436A of the Education Act 1996¹, 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. This duty extends to all children in the area, including those the LA is unaware of.

In January 2018, the Minister for Education committed to using existing powers under section 29 of the Children Act 2004² to make regulations requiring:

- each LA (LA) to establish and maintain a database to assist them in identifying children not on any maintained schools roll, not on any education

¹ <https://www.legislation.gov.uk/ukpga/1996/56/section/436A>

² <http://www.legislation.gov.uk/ukpga/2004/31/section/29>

other than at school (EOTAS) roll, or independent school roll, and not receiving a suitable education:

- Local Health boards (LHBs) to disclose to LAs specified, limited, non-clinical information about a child who is ordinarily resident in that LA's area; and
- independent schools to disclose to a LA information regarding learners registered at their establishment.

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 and as such parental consent will not be required.

The data held on each LA database will be restricted to that which is necessary to identify children not on any school roll, education otherwise than at school (EOTAS) register and not receiving a suitable education, 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 Welsh Government considers the wider benefit of this approach is reasonable in terms of the education and overall welfare of home educated children. The longer term consequences of LAs not being assured that all children living in their area are receiving a suitable education are that the children are unlikely to achieve recognised qualifications, experience difficulty in accessing the labour market and be at risk of being not in education, employment or training (NEET).

Long term

The latest Pupil Level Annual School Census (PLASC) figures for 2018/19³ indicate that there are 2,517 children *known* to LAs that are being educated at home. Each LA is responsible for ensuring all children in their area – even those they may be unaware of receive a suitable education. The database regulations will enable each LA to compile a reasonably complete database of all compulsory age school children in their area by cross matching education and health data.

This policy is not in isolation and is set within the wider context of education reform as set out in *Education in Wales: Our National Mission*⁴ – the Welsh Government's action plan for 2017-21- which sets out the action required to fulfil

³ <https://gov.wales/sites/default/files/statistics-and-research/2019-07/pupils-educated-other-school-september-2018-august-2019-644.pdf>

⁴ <https://gov.wales/sites/default/files/publications/2018-03/education-in-wales-our-national-mission.pdf>

our ambition that children and young people in Wales are equipped with the right skills for a changing world. Although our national mission sets out how the school system in Wales will move forward over the next four years, the principles of providing the necessary support for children in schools - and the rights of all children to receive an education - should apply equally to those who are home educated.

Prevention

Ensuring children and young people receive an efficient and suitable fulltime education is a requirement on parents under section 7 of the Education Act 1996 as well as a right under the UNCRC, and will help to ensure children develop and reach their full potential, and reduce the chances of becoming NEET. The database will assist with the identification of children known to health services or independent schools but not known to local authorities. This will enable the LA to fulfil their duty to ensure all children in their area – including those they were unaware of – are receiving a suitable education.

Integration

Prosperity for All: the national strategy sets out our central mission to deliver a prosperous Wales that benefits everyone. Our long term aim is to build a Wales that is prosperous and secure; healthy and active; ambitious and learning and united and connected. To deliver this aim, Welsh Government identified twelve well-being objectives which set out where we can make the greatest contribution to the National Well-being Goals, placing the Well-being of Future Generations Act at the heart of our decision making.

These regulations support the goal of a more equal Wales, a society that enables children and young people to realise their rights and to fulfil their potential no matter what their background or circumstances (including socio-economic background and circumstances)

[Prosperity for All](#)

These proposals are driven by the need to support a child's right to education and to ensure that they, and their parents, are empowered and comfortable in accessing universal and targeted services that are aimed at supporting their well-being.

Requiring LAs to develop and maintain a database of all compulsory age children in their area will assist them to meet their duty to ensure all children receive their entitlement to education as per Section 7 of the Education Act 1996⁵ and are allowed

⁵ <http://www.legislation.gov.uk/ukpga/1996/56/section/7>

to develop and fulfil their ambitions.

Collaboration/Involvement

Partners with a shared interest in the proposed regulations include local authorities, local health boards, independent schools and home educators.

In addition officials have engaged with health colleagues, digital transformation teams and data protection colleagues.

Officials have also engaged with Information Commissioner's Office (ICO) to discuss data protection and GDPR implications. A Data Protection Impact Assessment (DPIA) will be published.

In addition, an internal working group of officials from across Welsh Government has overseen the development of the draft regulations.

A 12 week formal consultation will run from 30 January - 22 April 2020

Impact

The main arguments for taking forward these proposed regulations are:

- help with identifying children ;
- ensure a consistent and more robust approach by all LAs to identifying children;
- create a lawful basis for the disclosure of information
- that it will help LAs meet their statutory duty to identify children not receiving a suitable education and take any remedial steps as appropriate, e.g. provide additional support.

The arguments against taking forward these proposed regulations are that:

- LAs may negatively respond to the regulations given it places the onus on them to identify home educated children, to develop and maintain the database and to cross check education and health data, and not on parents to inform the LA they are home-educating.
- there will be little support for the proposed regulations amongst some home educating communities, with some perceiving this as a challenge to their choice to home educate.
- LAs already have ways of identifying children, such as live birth data and school roll data;

Costs and Savings

COST BENEFIT ANALYSIS

Potential additional costs

All LAs have a list of home-educated children known to them, and have information about all pupils on school rolls. The increase in administration costs associated with maintaining a database of all children should not be significant.

Children identified as a result of the regulations will potentially be in scope of Children Missing Education protocols until such time as the LA is satisfied that they are receiving a suitable education.

The Welsh Government has allocated £1.1m commencing in financial year 2020-21, to support LA's to discharge their existing duties and new expectations as will be outlined in new statutory guidance in relation to home education. In addition £400k will be provided to LA's to provide direct support to home educated children as part of the offer of support Welsh Government is developing to help home educating families.

Mechanism

The proposal is to bring forward regulations requiring each LA to establish and populate a database of all compulsory school age children in their area. Once the LA has a reasonably complete database it will then be able to compare education and health data in order to identify children not already known to them, and to ensure that they are receiving a suitable education regardless of where that is delivered. The regulations will provide the lawful basis for the disclosure of specified information from LHBs and independent schools with local authorities.

A Regulatory Impact Assessment (RIA) and a Data Privacy Impact Assessment (DPIA) will be completed. This consultation will help inform the completion of the RIA and the DPIA.

Conclusion

The Welsh Government recognises the right of parents to home educate their children, but equally recognises that this must be balanced with the right of the child to an education. As far as is practical, Welsh Government will support parents in undertaking this responsibility, whilst putting in place mechanisms to enable LAs to discharge their duties. Ultimately, failure to provide a suitable education is incompatible with the UNCRC to which Wales is a signatory.

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 complete database of all children of compulsory school age in their area.

Consideration has been given to equality and human rights throughout the development of this policy. The regulations aim to ensure that an LA is assisted to carry out its functions to establish whether, or not, children within its locality are receiving a suitable education. The Welsh Government considers this to be a proportional and reasonable approach to ensuring children of compulsory school age are receiving a suitable education.

The most significant impact of the regulations will be on LAs. Local health boards and independent schools will also be impacted with the new requirement to disclose specific data with each LA.

In order to assess the effectiveness of the database the Welsh Government proposes to request LAs to provide an annual return on the number of children identified using the database not previously known to them.

As we work to finalise the regulations we will continue to develop and refine mechanisms to evaluate the impact of the regulations.

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

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