



Llywodraeth Cymru
Welsh Government

Welsh Government Integrated Impact Assessment Summary

Title of proposal:

Statutory Guidance for Local Authorities for Home Education & A Handbook for Home Educators

Department:

Education and Public Services

Cabinet Secretary/Minister responsible:

Minister for Education, Kirsty Williams AM

Start Date:

July 2018

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What action is the Welsh Government considering and why?

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The Welsh Government intends to draft regulations to require local authorities to maintain and populate a database to assist them in identifying children and young people not on a maintained school register, not in education other than at school (EOTAS), not on an independent school roll and not receiving a suitable education.

The aim of the regulations is to help 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 Child and Article 2 of 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. We will consult on the regulations separately in the coming months.

Statutory guidance has been developed to support local authorities in identifying children and young people not on a maintained school register, not in education other than at school (EOTAS), not on an independent school roll and not receiving a suitable education. Whilst not new duties, the guidance reinforces the requirement for local authorities to ensure that all children in their locality are receiving a suitable education.

In addition a Handbook for Home Educating Families has been developed providing advice and sign posting to services for those currently or intending to home educate their children

There is a duty on parents to ensure that a child of compulsory school age receives efficient, full time education suitable to the child's age, ability and to any special needs the child may have¹. Most parents choose to have their children educated in school. However, some parents choose to educate their children at home.

The Welsh Government respects the decision by some parents to educate their children at home, but this choice must be balanced with the right of children to receive a suitable education.

Under section 436A of the Education Act 1996², local authorities have a duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education, and to intervene if it appears that they are not.

¹ <https://www.legislation.gov.uk/ukpga/1996/56/section/7>

² <https://www.legislation.gov.uk/ukpga/1996/56/section/436A>

The duty to inform local authorities of the decision to home educate rests on the school rather than the parent, where a child is enrolled at a maintained school. As a result, difficulties in identifying home educated children arise when parents choose to home educate their child as soon as they reach compulsory school age, as the child was never entered on a school register, or when families move from one local authority to another.

These proposals are supported by the overarching objective of securing the child's right to development through education as outlined in the United Nations Convention on the Rights of the Child (UNCRC)³. In addition for those children who may be seen by professionals, there may be an ancillary safeguarding benefit.

Local authorities are of the opinion that strengthening the current legislative framework with statutory guidance will strengthen their ability to discharge their legal duty. This includes processes for identifying children not on a school roll, making assessments of the education they are receiving, and taking action where necessary when suitable education has not been provided.

In January 2018, the Minister for Education committed to using existing powers under section 29 of the Children Act 2004⁴ to require local authorities to establish a database to assist them in identifying children not receiving a suitable education⁵. The regulations will be developed and consulted on separately.

Welsh Ministers are also required to have due regard to the UNCRC when exercising any of their functions⁶ as encapsulated in the Rights of Children and Young Persons (Wales) Measure 2011⁷.

In addition, statutory guidance for local authorities has been developed under section 436A of the Education Act 1996 to support local authorities in ensuring home educated children are receiving a suitable education.

The statutory guidance will assist local authorities to carry out their duty to ensure children receive a suitable education. In addition to providing clarification on the characteristics of a suitable education, the statutory guidance reinforces the levers available to local authorities to use when a suitable education is not being provided. Where there is a lack of substantive information about a child/ren's education the presumption by the local authority will be that the child/ren is not receiving a suitable education unless there is evidence to the contrary. The statutory guidance also clarifies the support local authorities could make available to home educators in their area.

A hand book for home educators has also been produced to support parents in

³ http://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary-1.pdf

⁴ <http://www.legislation.gov.uk/ukpga/2004/31/section/29>

⁵ <https://beta.gov.wales/oral-statement-securing-right-suitable-education-all-children>

⁶ <http://www.legislation.gov.uk/mwa/2011/2/contents>

⁷ <http://www.legislation.gov.uk/mwa/2011/2/contents>

accessing universal and targeted services that will support the education and well-being of both the child and the parent.

As a result of these proposals some parents may experience a level of enquiry from local authorities they may not have experienced before and may consider this to be an intrusion into their family life. However, 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 children not receiving a suitable education in later life are that the young person is 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 2017/18⁸ indicate that there are 1,964 children known to local authorities that are being educated at home. This is an increase of 240 on the figure for 2016/17. The PLASC data indicates a year on year increase in numbers. The Children's Social Care, Research and Development Centre (CASCADE) published a report in 2017⁹ which suggested that the actual figure of home educated children is between 2-3,000, but also acknowledged that this was an increasing figure. The home education population is diverse and reasons for home educating include: ideological beliefs, culture, religion, education pedagogies, health, special educational needs, bullying, or school-based factors such as distance to school or dissatisfaction with teaching.

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*¹⁰ – the Welsh Government's action plan for 2017-21 - which sets out the action required to fulfil 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.

Furthermore, this policy proposal is intended to support families and local authorities in ensuring that efficient and suitable education is provided to all children. It is aiming to bridge the relationship between professionals and families in ensuring that every child is supported to fulfil their potential.

Prevention

The consequences of children not receiving a suitable education or no education can mean in later life that the young person is unlikely to achieve recognised qualifications, experience difficulty accessing the job market and be at risk of being not in education, employment or training (NEET). Ensuring children and young

⁸ <https://gweddill.gov.wales/docs/statistics/2018/180725-pupils-educated-other-than-at-school-2017-18-en.pdf>

⁹ <http://safeguardingboard.wales/2017/11/16/home-education-children-report/>

¹⁰ <https://gov.wales/sites/default/files/publications/2018-03/education-in-wales-our-national-mission.pdf>

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.

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 policy proposals 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. By ensuring home educated children are receiving a suitable education and providing local authorities with the guidance they need to ensure this provision takes place will support;

- Children to receive their legitimate entitlement to education as per Section 7 of the Education Act 1996¹¹ ;
- children to develop and fulfil their ambitions;
- better signposting to health improvement interventions and other universal services.

Collaboration

Partners with a shared interest in this proposal include local authorities, parents and home educators, and organisations with responsibility for children and young people.

In preparation for the development of statutory guidance officials undertook visits to each of the 22 local authorities in Wales to look at current working practices and practical approaches. In addition we have worked closely with a local authority stakeholder group and the Welsh Local Government Association (WLGA) to look at the reasons for home education and trends/patterns across Wales to better inform development of the guidance. Officials have also met with home educators both in groups and individually to discuss the proposals. In addition a formal consultation will take place in 2019 which will involve relevant stakeholders as well as children and young people

A Twitter campaign aimed at engaging with home educators commenced on 27

¹¹ <http://www.legislation.gov.uk/ukpga/1996/56/section/7>

November and will run until the end of the formal consultation period next year.

Involvement

In developing the guidance, pre-engagement has taken place in the form of several meetings with the Children's Commissioner for Wales, who has a particular interest in this policy. Furthermore the draft documents have been shared with the Commissioner and her comments have been incorporated where appropriate in order to assure her that her three tests have been considered i.e.

- **that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general.**
- **that every child receives a suitable education and their other human rights including health, care and safety.**
- **that every child should have the opportunity to be seen and their views, including their views about their education, and experiences listened to**

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

A 12 week formal consultation will run from 29 July 2019 – 21 October 2019

Impact

These proposals do not provide local authorities with new powers; rather the new statutory guidance will make it clear what existing powers local authorities have at their disposal and will strongly reinforce the expectation that these powers should be utilised appropriately in order to ensure that home educated children do receive a suitable education.

Furthermore, the Handbook for Home Educators has been developed alongside the guidance to strengthen support and advice to those parents who are currently home educating or considering home education and to signpost them to universal and targeted services.

The main arguments for taking forward this proposal are:

- That it will support parents in making informed choices about the education of their child/children; and, should they home educate, ensure mechanisms are in place to support the education of that child/children and broader access to universal services;
- That it will help strengthen current policy, provide clear guidance to local authorities and ensure consistency across Wales;
- That it will help Welsh Government in developing and delivering policy to support families who are or who are considering home education;
- That it will help local authorities meet their statutory duty to identify children not receiving a suitable education and take any remedial steps as appropriate, e.g. provide additional support or issue a school attendance order (SAO).
- This proposal would help to support a child's right to an education, to develop healthily, to be heard and be safe.

The acknowledged disadvantages of taking forward this proposal are that:

- That local authorities may negatively respond to the proposals given it places the onus on them and not on parents to identify home educated children.
- There will be some home educators who will not welcome this proposal.
- The assessment element is likely to increase costs for local authorities

Costs and Savings

COST BENEFIT ANALYSIS

- ♦ A Regulatory Impact Assessment will be completed following the consultation

Mechanism

The proposal is to issue statutory guidance to local authorities to reinforce their existing statutory duties to ensure that all children in their area are identified and are receiving a suitable education, and to set out expectations for local authorities on assessing the suitability of education received by home educated children and young people.

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 local authorities to discharge their duties. Ultimately, failure to provide a suitable education is incompatible with the UNCRC to which Wales is a signatory.

Consideration has been given to equality and human rights throughout the development of this policy. The proposal aims to ensure that a local authority is assisted to carry out its functions to establish whether, or not, children within its locality are receiving a suitable education. The proposals which include offering support to home educated children and families should assist in children taking full advantage of the educational opportunities available to them. The Welsh Government considers this to be a proportional and reasonable approach to ensuring equity of opportunity between those who are home educated and those who are not.

7.2 What are the most significant impacts, positive and negative?

The most significant impacts are those on the parent and the local authority, however, it should be noted that the responsibilities on each to ensure that the child receives efficient full-time education has not changed.

The proposals are intended to produce a reasonable, proportionate and consistent approach across Wales, and ensure every child's rights to an education are fulfilled. There is an associated benefit in supporting access to universal and targeted services that extend beyond the remit of education i.e. health.

The primary negative impact is that there may be a perceived intrusion on the private life of families by some home educators. However, all practical measures will be taken to ensure that this perception does not become a reality and that a positive and constructive relationship with local authorities and families is forged with the best interests of the child at heart.

7.3 In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

Prosperity for All: the national strategy set 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 policy proposals 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).

7.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

No formal evaluation is intended, however, implementation of the policy will be monitored through ongoing dialogue with local authorities, ADEW, regional education consortia, Estyn, schools and communities.

Children's Rights Impact Assessment

1. Describe and explain the impact of the proposal on children and young people.

This proposal is fundamentally about ensuring compliance with children's rights and, in doing so, ensuring that children of compulsory school age receive a suitable education.

The Welsh Government is rightly proud of our record of promoting children's rights and working to ensure all children in Wales have the best start in life. Our ambition is that the rights of every child and young person in Wales should be promoted and respected to enable them to be the best they can be. The Welsh Government acknowledges that under the United Nations Convention on the Rights of the Child (UNCRC) children have a right to an education and that a child's educational journey should be one of the most enriching and rewarding times of their life. All children have a right to an education which develops their personality, talents and mental and physical capabilities to their fullest potential. Such education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1)¹².

Positive Impacts on Children and Young People

- **to ensure that all children realise their right to receive a suitable education**
- **to support home educators to access help and support from local authorities and other public services**
- **to enable local authorities to take account of the views of the child(ren)**
- **will support the objectives of the Additional Learning Needs (ALN) Bill once enacted (September 2020), which will include ensuring that children who have additional learning needs receive adequate provision to meet those needs, irrespective of where they are educated, including at home.**

Seeing the child to discuss their education provision and access to resources will uphold a number of their rights alongside their right to an education and to fulfil their potential, including their rights to express their views and to receive appropriate information in order to make informed choices, to support and provision, to play and leisure activities and to be kept safe.

Potential Negative Impacts

We acknowledge that as a result of statutory guidance there could be an increase in

¹² UN Committee on the Rights of the Child General Comment No.1 "The aims of education"
[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx)

the use of school attendance orders by local authorities. In extreme cases parents who fail to ensure their child receives a suitable education and/or fail to comply with a school attendance order may face prosecution.

How a child reacts to their parent being potentially convicted will depend on the individual circumstances, including the age of the child and their cognitive ability. However, it is reasonable to assume that any child or young person is likely to find it unsettling.

We must also consider the extreme cases where a prosecution may have on a parent's employment or employability. Should a parent lose their job as a result of breaking the law, it is likely to have a profound effect on the income coming into that family, especially where the parent in question is the sole earner. This in turn is likely to have a negative impact on the child or children concerned, financially, socially and emotionally.

It is possible this proposed approach will generate criticism from certain stakeholders for not placing a duty on parents to register that they are home educating their children with the local authority. We believe that placing this duty on parents – some of who will already be disengaged from the state – is unlikely to compel all of them to register with their local authority.

There is also a risk that this approach and more specifically the regulations and/or statutory guidance will be challenged in the courts through a judicial review. Officials are working to mitigate the legal and data protections risks associated with the database and statutory guidance.

2. Explain how the proposal is likely to impact on children's rights.

This Children's Rights Impact Assessment has been developed to ensure due regard is given to Children's Rights as ministerial decisions are made about the statutory guidance for local authorities as well as the Handbook for Home Educators. The Welsh Government is committed to the UNCRC as a basis for all of its decision making affecting children and young people, as encapsulated in the Rights of Children and Young Persons (Wales) Measure 2011.

Education in Wales: Our National Mission¹³ sets out the action required to realise our ambition that children and young people in Wales are equipped with the right skills for a changing world. Although the action plan 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 should apply equally to those who are home educated. Allied to this are the inalienable rights of children under the UNCRC including the right to an education and being able to develop in line with the Articles below

¹³ <https://beta.gov.wales/sites/default/files/publications/2018-03/education-in-wales-our-national-mission.pdf>

Article 1	Everyone under 18 years of age has all the rights in the Convention
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is in the best interests of the child.
Article 4	Governments should make these rights available to children.
Article 5	Governments should respect the rights and responsibilities of families to direct and guide their children so that' as they grow, they learn to use their rights properly.
Article 6	All children have the right to develop.
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
Article 16	Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
Article 18	Both parents share responsibility for bringing up their children, and should always consider what is best for each child.
Article 28	Children have a right to an education.
Article 29	Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures
Article 30	Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in their country or not.

The statutory guidance will assist local authorities in meeting their duty under Section 436A Education Act 1996. This is the duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education, and to intervene if it appears that they are not.

The Handbook for Home Educators outlines a proposed package of educational support for home educated children which includes (but is not limited to) to the development of an home education page on Wales' digital learning platform Hwb, help with exam registrations, information on accessing universal services and an offer of support from Careers Wales. A number of universal health, care and support services and youth services are facilitated through schools which mean that some home educated children and their families may not be aware of their entitlements and potentially miss out on key initiatives and services

UNCRC Articles

Articles 1-5; the Welsh Government observes these articles in taking forward these proposals

The Committee on the Convention on the Rights of the Child has identified the principle that “best interests” (Article 3) of the child should be a primary consideration in all actions concerning children. The Convention also asserts in Article 18 that the best interests of the child will be parents’ basic concern.

Article 28 of the convention states that children have a right to an education. This is complemented by Article 29 which states education should develop a child’s personality and talents to the full. These rights fully support Article 6 which provides children with the right to develop. The potential consequences of children not receiving a suitable education or no education in later life include the young person not achieving recognised qualifications and experience difficulty accessing the job market. Ensuring children and young people receive their right to a suitable education will help to ensure they reach their full potential.

By introducing regulations requiring local authorities to develop a database and by issuing statutory guidance combined with an offer of educational support for parents, the Welsh Government will be directly implementing Article 4 which calls on states to “undertake all appropriate legislative, administrative and other measures to the implementation of the rights recognized in the present convention”.

Introducing these proposals will also provide a platform for Articles 12, 19 and 24 to be observed when local authorities are delivering on their requirements

Articles 41 and 42 relate to existing statutory provision and promotion of the Convention which the Welsh Government will continue to work towards in respect of the proposals.

In developing these proposals officials will continue to be mindful of the need to ensure that, as far as possible, it supports the UNCRC

The Welsh Government acknowledges it will be a challenge to balance the rights of the child with the choice of parents to home educate, and to ensure that we do not infringe upon the freedom parents have to make decisions on what they believe are valid choices for their children. Whilst some parents may argue this approach will infringe on their family privacy, the Welsh Government believes this is outweighed by the responsibility to ensure that children and young people receive a suitable education and have the opportunity to develop into the best that they can be; to be well-educated, safe, happy and have high levels of wellbeing and to develop the skills and knowledge they need to play an active role in their communities and wider society.

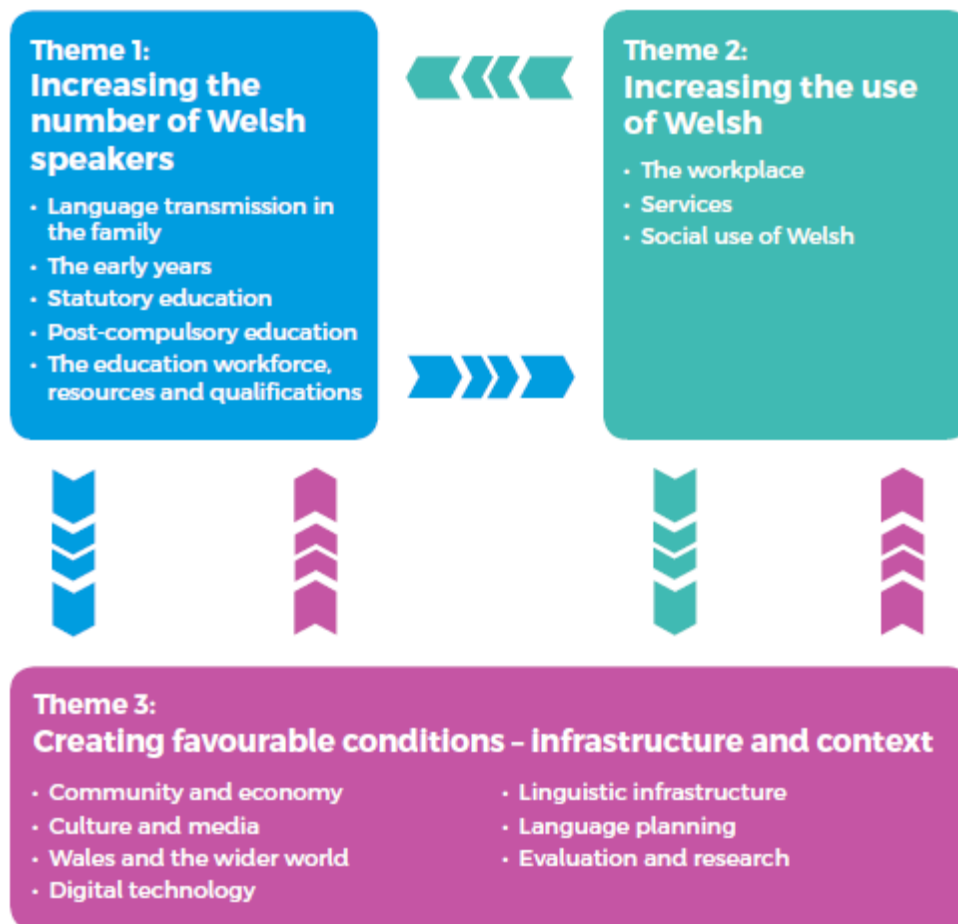
Welsh Language Impact Assessment

Cymraeg 2050 is our national strategy for increasing the number of Welsh speakers to a million by 2050.

The Welsh Government is fully committed to the new strategy, with the target of a million speakers included in the *Taking Wales Forward* Programme for Government and *Prosperity for All: the national strategy*. A thriving Welsh language is also included in one of the 7 well-being goals in the Well-being of Future Generations (Wales) Act 2015.

We also have a statutory obligation to fully consider the effects of our work on the Welsh Language. This means that any Welsh Government policy should consider how our policies affect the language and those who speak it.

The *Cymraeg 2050* strategy has three themes:



The headings under each theme outline the scope of activities that can affect the language.

As a general rule, if your policy has the potential to impact on people, it will impact in some way on Welsh speakers and therefore on the Welsh language.

1. Welsh Language Impact Assessment reference number (completed by the Welsh Language Standards Team, email: Safonau.Standards@gov.wales):

Clearance No: 03/08/2018

2. Does the proposal demonstrate a clear link with the Welsh Government's strategy for the Welsh language? – *Cymraeg 2050 A million Welsh speakers* and the related Work Programme for 2017-2021?

No, there are no significant links between this proposal and the Welsh Government's strategy for the Welsh language.

3. Describe and explain the impact of the proposal on the Welsh language, and explain how you will address these impacts in order to improve outcomes for the Welsh language:

There are no positive or negative impacts or effects on the Welsh language as a result of this. The proposal is primarily concerned with ensuring that a child of compulsory school age receives efficient full-time education suitable to the child's age, ability and to any special needs the child may have, either by regular attendance at school or otherwise.

However, there are 388 Welsh medium schools in Wales¹⁴. Of these schools 48% are in 3 local authorities – Gwynedd, Carmarthenshire and Anglesey which have a total Welsh Speaking population of 193,616¹⁵. This accounts for 51% of the total population of the 3 local authorities¹⁶. We acknowledge that those home educated children not receiving any Welsh medium education, maybe prevented from being involved in the local community, and wider Welsh community's social and cultural life.

There will be an ongoing need to liaise with key stakeholders throughout the development of this policy through the medium of Welsh. Terminology within this area may be complex, therefore we will discuss the Welsh language terminology with stakeholders to ensure that it is easy for all to understand and considers regional variations.

The formal consultation will commence 29 July 2019 for 12 weeks. Consultation documents, including easy read and youth friendly versions, will be available bilingually on the Welsh Government website, as well as in bilingual printed copies.

¹⁴ <https://gov.wales/statistics-and-research/address-list-of-schools/?lang=en>

¹⁵ <https://statswales.gov.wales/Catalogue/Welsh-Language/WelshSpeakers-by-LA-BroaderAge-2001And2011Census>

¹⁶ <https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates/Local-Authority/populationestimates-by-localauthority-year>

Bilingual public and stakeholder engagement events will also be held across Wales in 2019.

In addition to detailed questions about the proposal, the Consultation will include the mandatory question about how the proposal could impact on the Welsh language.

No negative impacts have been identified to date.

No specific impacts on Welsh Language provision have been identified, but this will be considered further as part of the consultation process.

♦ ***How will you know if your policy is a success?***

Legislation in the UK regarding home education is one of the least regulated systems in Europe. Strengthening the policy and legislative framework around home education will help local authorities to take a more strategic approach to planning and delivering support to home educating communities. It will provide Welsh Government and local authorities with more accurate data on the number of home educated children and identify emerging trends. This is about supporting a child's right to an education, to be heard and safe, it is about upholding the rights of children who, by the very fact they are children, are less able to defend those rights.

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

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