

Number: WG43615



Llywodraeth Cymru  
Welsh Government

## Welsh Government Consultation - Summary of responses

Draft regulations that will require each local authority (LA) to set up a database of all compulsory school age children in their area

Date of issue: 29 October 2021

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

# Draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020

**Overview** This document summarises the responses received to a consultation on the Welsh Government's draft regulations that will require each local authority (LA) to set up a database of all compulsory school age children in their area.

**Action required** None - for information only.

**Further information** Enquiries about this document should be directed to:  
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**Related documents** Welsh Government consultation document - Consultation on Draft Regulations

[Local authority education databases | GOV.WALES](#)

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# 1. Background

- 1.1 In July 2019 the Welsh Government conducted a consultation on the Local Authority home education statutory guidance and the handbook for home educators. The consultation was intended to gain views from a range of stakeholders to inform further development of the home education statutory guidance, handbook for home educators and the database proposals.
- 1.2 Officials commissioned Arad Research to analyse the responses received during the consultation and to draw out key messages associated with specific themes and to present key findings. The [summary report](#) was subsequently published in December 2019.
- 1.3 Responses to this consultation helped inform the questions and themes to be included in a [further consultation](#) on the database regulations which was conducted in January 2020.
- 1.4 This report summarises the analysis of the database consultation and identifies the key messages and themes.

## 2. The consultation

- 2.1. A 12 week consultation on the database regulations launched on 30 January 2020 and closed on 13 May 2020. Its purpose was to gather views on draft regulations that would require each local authority (LA) to set up a database of all compulsory school age children in their area.
- 2.2. In normal circumstances, an analysis and summary report would have been published within twelve weeks of the closure of the consultation. However, due to unprecedented impact on resources of the Covid19 pandemic, it was not possible to do so. In the interests of transparency, it was decided to publish an [interim report](#) of all of the consultation responses with appropriate redactions. It has now been possible to undertake a full analysis of the consultation and this report summarises the results.
- 2.3. The main consultation was conducted both on-line and in paper-form received by email.
- 2.4. It consisted of 26 main questions using a combination of open and closed forms. The format of the analysis of the responses reflects this.
- 2.5. The following questions were directed at particular stakeholder groups (some respondents in other stakeholder groups also added comments):
  - Questions 13 to 16 - Local Health Boards
  - Questions 17 to 19 - Independent Schools
  - Questions 20 to 23 - Local Authorities
- 2.6. The questions, which were informed by a previous consultation (see 1.2 above), covered a range of themes. These included:
  - Information and privacy
  - Section 436A of the Education Act 1996 in relation to identifying children not receiving a suitable education
  - Organisational processes and considerations (focused on Local Health Boards (LHBs), Independent Schools and Local Authorities)
  - Protected characteristics
  - Welsh Language
- 2.7. Respondents were also invited to offer any additional comments that were not covered by the other questions.
- 2.8. The consultation was supported by a communications strategy which saw officials promoting engagement in the consultation through key stakeholder networks and meetings, tweets on social media and publication on the Welsh Government website.
- 2.9. A list of the consultation questions is available at Annex 1.

### 3. Overview of consultation responses

- 3.1. A total of 186 responses were received (141 online (of which 105 were fully completed) and 45 received via e-mail and in paper form). There were 18 responses from organisations and representative bodies (Estyn; the Office of the Children’s Commissioner for Wales; teaching unions; GMC; UNICEF; parents, carers and children and young people; and other national bodies). The remainder were individual responses.
- 3.2. The responses were categorised into seven stakeholder groups.
- 3.3. There is a significant variation in the number of responses in each stakeholder group. Therefore, care should be taken when interpreting any analysis of differences between the views of different categories of respondent.
- 3.4. The format of the overview takes into account that many responses did not necessarily conform to the open and closed question type form.
- 3.5. Similar to the previous consultation, respondents were not asked to specifically identify themselves as home educators but some chose to so in their responses. It is likely that most individual respondents are also, in fact, home educators. For this reason, those self-identifying as home educators could not be separated into a distinct separate category.

Category	Number of responses	%
Individuals (including home educators)	130	87.9
Local Authorities	6	4.0
Education stakeholders	5	3.4
Local Health Boards	2	1.3
Health sector (other than Local Health Boards)	2	1.3
Third Sector	2	1.3
Home education organisations	1	0.7

- 3.6. Responses received via e-mail or in paper form varied in structure, either following the structure of the consultation questions closely and/or providing commentary on the draft regulations. Responses also varied significantly in terms of length and supporting commentary provided. Not all respondents commented on every question and some chose not to respond to the questions at all.
- 3.7. The response analysis broadly follows the structure of the consultation questions. In each case, the consultation question (and sub-questions) are shown. The number of responses and percentages to closed type questions (Yes/Positive, No/Negative or Neutral/No comment) are shown, where appropriate. Some respondents chose not to answer each question and therefore the total number of respondents to each question can vary.
- 3.8. For open type questions or sub-questions, a small sample of comments that typify the responses or reflect the themes in the responses are shown.

### Question1

The draft regulations require local health boards and independent schools to disclose to local authorities (LAs) the information listed in Schedule 1 to the regulations. This will assist the LA in identifying children of compulsory school age in their locality currently not known to them.

- i) Do you think that the information requested is reasonable and proportionate? What are the reasons for your answer?
- ii) If you do not think that the information requested is reasonable and proportionate, what would you propose is the best way(s) for LAs to meet their duty to identify children of compulsory school age to ensure they are receiving a suitable education?

Yes/Positive	No/Negative	Neutral
19.9%(29)	78.1%(114)	2.1%(3)

N=146

### Comments

There were 146 responses to this question. Nearly 20% of respondents (predominantly from public bodies and organisations) agreed with the question. The following typifies their responses:

Yes. A local authority can only fulfil their statutory duty to ensure that all children of compulsory school age are receiving a suitable education if they know of all the children that reside in their area. It is, therefore, reasonable and proportionate to require local health boards and independent schools to share with the relevant local authority basic information about children known to them.

It is adequate. It will enable a “reasonably “complete list but not a live list.

Yes, as this is the only way to find out about children of compulsory school age in the area. The Education Welfare team comment that they would welcome this database.

Conversely, slightly more than 78% of respondents (predominantly individuals) disagreed with the question. The following typifies their responses:

It violates patient confidentiality, and breaches data protection legislation. It is likely to result in some parents refusing to access health care services for their children because they are worried about their details being passed on to the LA.

No. It breaches the Human Rights Act 2018 article 8. It interferes with a family’s right to privacy.

The draft regulations do not specify the legal basis of the database or how the data will be used.

### Question 2

Currently there is a situation where LAs are responsible for children in their area that they do not know about. Under section 436A of the Education Act 1996 LAs 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 i) are not registered pupils at school, and ii) are not receiving a suitable education otherwise than at school.

- i) Do you think the database will help LAs, as far as it is possible to do so, to identify children not currently known to them and/or children missing education in their area?
- ii) What is the reason for your answer

Yes/Positive	No/Negative	Neutral
15%(20)	77.4%(103)	7.5%(10)

N=133

### Comments

There were 133 responses to this question and 15% of respondents (predominantly from public bodies and organisations) agreed with the question. The following typifies their responses:

Yes, this will help LAs as at present LAs only know about children who have registered for a LA school. This proposal will also allow the authority to identify children missing education.

It will enable the LA to cross reference known pupils with those who are of school age and registered for health services in the area, but who may not be receiving a suitable education at school or otherwise.

Conversely, slightly more than 77% of respondents (predominantly individuals) disagreed with the question. The following typifies their responses:

Children who home educate are already as far as I am aware required to write to the education authorities to inform them that are home schooled. This is sufficient. I do not believe further action is required.

Local Authorities have no such duty to identify children not known to them. Section 436A of the Education Act 1996 gives Local Authority no such duty.

It will not help in this regard at all, many families choose to be outside of mainstream schooling for lots of different reasons, as it seeks to assist in finding those "not" receiving a suitable education it will by default intrude on all others and directly impact their rights to privacy and freedom of choice

### Question 3

Without a database, what reliable and consistent alternative method would enable the LA to identify a child they have no prior knowledge of?

Typical responses to this question were:

Existing approaches are not reliable or consistent, including the use of the live birth registers and school deregistration notifications. It is difficult to foresee any other method being as reliable and consistent as a database that collates essential



information about children of compulsory school age from a range of appropriate sources.

Given the numbers involved, it would be very difficult to come up with an effective alternative to using a database and data matching. We would support the use of a database for this purpose.

Building a local authority culture of respectful engagement with home educating families, staying within the law and encouraging a plurality of differing educational philosophies would be much more likely to enable local authorities to engage with home educators.

Since the LAs have no duty to identify a child they have no prior knowledge of, there is no need for an alternative method. Creating any means for LAs to identify such children is outside their scope and therefore unlawful.

#### Question 4

The draft Children Act 2004 Education Database (Wales) Regulations 2020 propose local health boards disclose the information in Schedule 1 to LAs annually. Do you agree with an annual return? If not, how often do you think this information should be provided to LAs and when would the most appropriate time be?

Yes/Positive	No/Negative	Neutral
16.3%(22)	75.6%(102)	8.1%(11)

N=135

There were 135 responses to this question. Slightly more than 16% of respondents (predominantly from public bodies and organisations) agreed with the question. The following typifies their responses:

No, information should be shared on a half termly basis to ensure that LA can act in a timely manner and that any additional workload is manageable.

It is believed that an annual return would be quickly 'out of date' as circumstances can change quickly for some children.

Conversely, nearly 76% of respondents (predominantly individuals) disagreed with the question. The following typifies their responses:

I do not agree that health boards should be allowed to disclose any information unless a child's health or welfare (in regards to child protection procedures) is seen to be at risk. Simply being home educated does not equate to a child being at risk and therefore it is not appropriate for health boards to communicate this.

No. I do not believe that health boards should be required to disclose patient information.

#### Question 5

The Draft Education (Information about Children in Independent Schools) (Wales) Regulations 2020 propose independent schools disclose the information in Schedule 1 to

LAs annually. Do you agree with an annual return? If not how often do you think this information should be provided to LAs and when would the most appropriate time be?

Yes/Positive	No/Negative	Neutral
16.1%(20)	70.2%(87)	13.7%(17)

N=124

There were 124 responses to this question. Slightly more than 16% of respondents (predominantly from public bodies and organisations) agreed with the question.

Conversely, slightly more than 70% of respondents disagreed (predominantly individuals) with the question. The following typifies their responses:

I believe it should be every 6 months as within a year a child could be missing out on education and other rights

It is already provided for by the Education (Pupil Registration) (Wales) Regulations 2010, which apply to 'every school' in Wales.

No such disclosures are appropriate at all and run contrary to law in my opinion – namely the Human Rights Act 1998 and, I would hope, the General Data Protection Regulation (GDPR).

### Question 6

What would be the implications of a more frequent data return in terms of technical, administrative and resource implications on: LHBs, IS, LAs and other?

Examples of responses from stakeholders to this question were:

#### LHB

This would depend on what system is used to collate this information and whether it can be programmed to provide this information on a more regular basis.

#### IS

Annually, the most sensible time to submit the data would be at the same time the independent schools in Wales have to submit their PLASC return, ie the school census date (14th January 2020 this year) which is mandatory data under the Independent School (Provision of Information) (Wales) Regulation 2003. To submit the data more than annually may prove to be more onerous in terms of time, resources and expense.

#### LA

Currently not all authorities have the same recording system in place in order to collate and store pupils' details. It would be beneficial for any database to have the ability to sync with LA's current systems in order to avoid duplication of data collation and thereby reduce workload.

#### Other

There should not be any, more frequent or otherwise, as this breaches human rights.

### Question 7

Who, within the LA, would need access to the database in order to carry out their functions?

Typical responses to this question were:

Those with responsibilities for CME, HE and EOTAS, for example in our Local Authority this would be accessed by identified persons within the Education Inclusion Service in addition to senior management. In addition, the data section would need access in order to collate data returns.

No one. A database would be unlawful.

### Question 8

Do you think anything in the draft regulations could have a disproportionate impact on those with protected characteristics, and if so, what?

Yes/Positive	No/Negative	Neutral
68.9%(73)	19.8%(21)	11.3%(12)

N=106

There were 106 responses to this question. Nearly 69% of respondents agreed with the question. The following typifies their responses:

Yes, children from families with religious, political or philosophical beliefs may be impacted if their education is assessed by those with no understanding of different kinds of educational provision.

Yes, children with disabilities are more likely to be home-schooled.

As gender is a data requirement, this could have a disproportionate impact on children and young people in terms of protected characteristics if there are gender and self-identification issues. If contact with a parent is required the children would need to be addressed by the gender they identify with.

### Question 9

Does this proposal allow for the LA to meet their section 436A duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education?

Yes/Positive	No/Negative	Neutral
15.1%(18)	70.6%(84)	14.3%(17)

N=119

There were 119 responses to this question. Slightly more than 15% of respondents (predominantly from public bodies and organisations) agreed with the question. The following typifies their responses:

The proposal meets section 436A as the LA will be required to keep an up to date database on compulsory aged school children.

In the main, yes, but there will still be some who will be missed as data matching is never 100% accurate across large datasets, and there will be groups which are hard to track such as travellers and children who are educated outside Wales. Asylum seekers can also be hard to track due to sudden mobility. There will also be those children who are not in any dataset – those not registered with a GP for example.

Conversely, nearly 71% of respondents (predominantly individuals) disagreed with the question. The following typifies their responses:

It interferes with a right to a private family life even in cases where there is no cause for concern, and is of no benefit to home educated children or their families.

It goes well beyond what is required by law.

### Question 10

In order to identify the effectiveness of the database the Welsh Government will request from LAs an annual return on the number of children identified using the database not currently known to LAs. When would be the most appropriate and reasonable time to request this?

Responses to this question varied with no consensus on timing or disagreeing with the need for any return:

Some months after the data has been received – so for instance if received in October based on September data then it could be part of the January PLASC return.

Our responses relate to PLASC, and taking this into account there are two possible times of year we would suggest: October/November as this would allow children to take up places in school. PLASC date (mid January) may be too late to identify missing Reception age children. February- this is following PLASC, plus it will allow time for the LA to check the health information if health information is shared in October as has been proposed.

Same time as PLASC data collection.

### Question 11

Do you think a voluntary database of all statutory school-age children ordinarily resident within an LA area would assist LAs to meet their section 436A duty?

Yes/Positive	No/Negative	Neutral
14.7%(17)	49.1%(57)	36.2%(42)

N=116

There were 116 responses to this question. Nearly 15% of respondents agreed with the question. The following typifies their responses:

A voluntary database would certainly be much better than a compulsory one, as long as it's respectful to children's and parent's rights. As long as parents are not pressured to enter their children's data into it, it could work well to establish good working relations between the parents and LAs.

If it were truly voluntary (families could join or leave as they desire), then it might be helpful.

A voluntary database would be more preferable than a compulsory database. Building strong, supportive relationships between home-educating families and the LA could lead to less animosity and more trust between them. Whether a voluntary register would help the LAs identify children in their area who are not receiving a suitable education is debatable. Those families are far more likely to want to remain 'under the radar'.

Conversely, slightly more than 49% of respondents disagreed with the question. The following typifies their responses:

No, as some parents may forget or may deliberately not register their children. This voluntary database is in effect what happens now, and there are many families we hear of (anecdotally) who have not made contact with the Home Education team. The Education Welfare Service state that they would strongly object to a voluntary database and feel that it needs to be compulsory.

No because currently, very few parents of children who are not known to the LA by virtue of deregistering from a school tend to seek out or make themselves known to the LA on a voluntary basis. Currently it tends only to be via other agency referrals, such as for instance via a PPN.

Voluntary wouldn't provide consistency across Wales, so it will need to be statutory if it is to work effectively.

### Question 12

What, if any, advantages and disadvantages do you think there would be in the disclosing of the required data to populate the database? Complete section relevant to you.

Typical responses describing advantages were:

The advantage to children would mean that they would not miss out on an education if they are identified as school aged and currently not receiving an education.

It will enable LAs to more fully identify children not in appropriate provision and to take follow up action.

Typical responses describing disadvantages were:

Loss of trust in medical services, resistance to approaching medical services, breach of GDPR and HRA.

Everything would need to be covered by privacy notices.

## Local Health Boards

### Question 13

Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

Yes/Positive	No/Negative	Neutral
100%(2)	0%(0)	0%(0)

N=2

This question was directed at LHBs, two of whom responded by agreeing with the question. Their responses are as follows:

From an Information Team perspective we follow Information Governance (IG) and Family Support team guidance. All PII data is password protected and/or IG compliant before it is shared externally.

Yes. Protocol in place.

### Question 14

Can you identify any key privacy risks and the associated compliance and corporate risks?

This question was directed at LHBs and two LHBs responded by providing comments. Their responses are as follows:

To be able to identify key risks, we would request that the HBs Data Protection Officer, SIRO and Caldicott Guardian review any privacy impact assessments and / or risk assessments along with the information sharing documentation that needs to be in place. Any such assessments would outline who is responsible for developing the system, how data is stored, shared and retained. There is mention of 3rd Party processors, but it is unclear who these are so this needs to be considered in any IG agreements as to controller / processor relationships. We would note that at present it is unclear how such data would be shared and that mechanism is usually of concern to us (e.g. an individual's email account or a SharePoint site that has user level access) as we are not always informed when people with access to such

reports have moved teams/organisations and should be removed from access to the data.

A Robust process for secure access and maintenance of that access is required. The Health Board Data Protection Officer would need to review the DPIA and therefore this can only be answered in relation to the consultation information provided. Some specific questions: Would Welsh Government/NWIS be developing the system? If not, who? Would this be the health board? We would want to know if the data will be stored on servers in Wales/UK. There is a mention of 3<sup>rd</sup> Party processors, but it is unclear who these are and whether they are noted in the DPIA.

### Question 15

Do you have any previous experience of this type of data disclosure/processing?

Yes/Positive	No/Negative	Neutral
100%(2)	0%(0)	0%(0)

N=2

This question was directed at LHBs, two of whom responded by agreeing with the question. Their responses are as follows:

As a public body, we have a duty under the public task function to appropriately share data with other organisations for the treatment and care of its patients in accordance with data protection legislation. We use the Wales Accord for the Sharing of Personal Information (WASPI) for such processing.

Yes. The health board has a duty under its public task function to appropriately share data with other organisations for the treatment and care of its patients in accordance with data protection legislation. This usually involves a data sharing agreement or ISP, and the health board has procedures in place to ensure that those organisations are also GDPR compliant, having appropriate technical and security measures in place.

### Question 16

What are the resource and technical implications of processing and disclosing the required data to LAs?

This question was directed at LHBs and two responded by providing comments. Their responses are as follows:

This depends on who is responsible for managing access rights? Who is responsible to hold the data should an individual request their information as entitled under GDPR. More information on the required Dataset Specification is required in order to adequately answer that question. Based on previous experience it could require 7-10 WTE days in order to develop, test (end to end) and implement a process like this – provide the specification is clear and agreed.

There are potentially resource issues also associated with the requirements that will be placed on Health to prove support to the children and young people who are

discovered through the list. These children and young people are likely to be hard to reach and vulnerable and therefore will require support and capacity which potentially currently doesn't exist. It is envisaged that resource would be required in terms of managing access rights.

## Independent Schools

### Question 17

Can you identify any key privacy risks and the associated compliance and corporate risks?

Yes/Positive	No/Negative	Neutral
0%(0)	100%(1)	0%(0)

This question was directed at Independent Schools. One representative organisation responded in the negative to this question.

### Question 18

Do you have any previous experience of this type of processing?

Yes/Positive	No/Negative	Neutral
0%(0)	100%(1)	0%(0)

This question was directed at Independent Schools. One representative organisation responded in the negative to this question.

### Question 19

What are the resource and technical implications of processing and disclosing the required data to LAs?

This question was directed at Independent Schools. One representative organisation responded by providing comments. Their response is as follows:

The most sensible time to submit the data would be at the same time the independent schools in Wales have to submit their PLASC return, ie the school census date (14th January 2020 this year) which is mandatory data under the Independent School (Provision of Information) (Wales) Regulation 2003

To submit the data more than annually may prove to be more onerous in terms of time, resources and expense.

## Local Authority

### Question 20

Is there anything missing from the Schedule of Information to be included in the database?

This question was directed at LAs, five of whom responded by providing comments. The following are their responses:



The information sought should enable LA's to identify relevant pupils or to make further enquiries with relevant agency. When safeguarding concerns have been an issue in other authorities this should be noted on the database also to ensure that LA officers are vigilant and respond appropriately to possible ongoing safeguarding concerns.

LAs will need names to be full legal names in separate fields for forename, surname and middle names. Also, to assist matching and speed the process up after the first match takes place, the NHS number would also be very beneficial.

Due to Welsh Government PLASC guidance, Gender only has two mandatory options (i.e. Male or Female) and our current Capita ONE system will not accommodate "if the person's gender has not been specified a statement about the effect".

Could there be a category whereby a professional from any agency could record the date when they saw the child.

Concerns if one single date is used and there is no obligation to update and share information other than at this date. Some pupils may be taken on and off roll and on and off surgery lists in line with these dates. Guidance may be needed for these instances.

### **Question 21**

Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

This question was directed at LAs, four of whom responded by providing comments. The following are their responses:

If the child is known and was on a roll then the existing LA system is robust and ensures that there is no inappropriate communications with families. The LA would use the PRUDIC system to ensure that no inappropriate communications were entered into with families.

This is a problematic area sometimes, as deaths are registered in the district in which they take place, so registrars can only tell us about deaths registered in our LA. We try to ensure inappropriate communications are not sent out, but it's not always possible.

Yes – We currently use the Capita ONE system that allows us to make a record "Inactive" with a reason of "Deceased" along with Deceased Date.

Not aware of this having been an issue.

### **Question 22**

Can you identify any key privacy risks and the associated compliance and corporate risks?

This question was directed at LAs, four of whom responded by providing comments. The following are their responses:

Health would need to have privacy notices and data disclosure agreements. Housing would need to have privacy notices and data disclosure agreements. Independent special schools would need to have privacy notices and data disclosure agreements.

Data transfers will have to be via secure means. There is an existing NHS portal that could be used. For independent schools, maybe set something up for them to use via DEWi? There is a risk these schools will send data to the wrong LA areas, so a system is needed for them to match pupils to LAs accurately. There may be a risk for a small number of children where address and contact details are kept secret for various reasons, mainly for child protection purposes. A protocol of some kind will need to cover this.

None beyond the collection and monitoring of information regarding all Children/Young People within some sort of Education already, e.g. LA Maintained Schools, EOTAS, etc.

Clear ISP to be in place to ensure that parents, agencies and LA's are clear to the data that can be shared and for what purpose, this will ensure that information shared is in compliance with data protection legislation. This information should include any relevant previous safeguarding concerns. Security protocols will need to be established in respect of the database, for example regarding access control and encryption of data, as well as agreed methodologies for the secure transfer and sharing of data. Consideration needs to be made of how the database will enable data controllers to carry out their data protection obligations in respect of data subjects (i.e. implementation of agreed retention periods, ability to amend data, secure deletion of data, measures to ensure accuracy of data etc.)

### **Question 23**

Do you have any previous experience of this type of processing?

This question was directed at LAs, four of whom responded by providing comments. The following are their responses:

Data Cymru info share for EHE. PLASC and EHE info share and databases.

Response from data team: We current collect information on a combination of both our Capita ONE system and an in-house spreadsheet. However, the idea is to bring all on to Capita ONE with a consistent approach to recording by all parties concerned.

Some experience LAs collate data manually but no electronic experience.

Yes, we have run many data matches for many purposes, so we are used to this type of processing.

### **Question 24**

We would like to know your views on the effects these draft regulations 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?

Examples of responses to this question were:

The draft regulations will not have significant impact on the Welsh Language. There is the potential for a positive impact on the Welsh language if the database identifies children who would normally have no contact with the language in a completely non-Welsh speaking home. The LA could signpost to relevant resources if it was the families wish to learn Welsh.

Such draconian proposals, if brought into effect despite not complying with Convention rights, GDPR and the Equality Act, would treat Welsh home educators less favourably than their English counterparts, thereby disproportionately disadvantaging Welsh citizens and speakers, and discriminating on the basis of one or more protected characteristics.

### **Question 25**

Please also explain how you believe the proposed regulations 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.

Examples of responses to this question were:

Legislation needs to change to direct parents to teach a minimum standard of comprehensive skills which must include Welsh language skills in order to ensure that those children who are HE are receiving a suitable education, this will enable those children to become full members of society in future and will increase job opportunities and so on.

It is acknowledged that those children educated otherwise may not be receiving any Welsh medium education, and may be prevented from being involved in the local community, and wider Welsh community's social and cultural life. However, the database may have uses to identify and communicate with these children to make an offer of support and advice in accessing Welsh medium educational resources. It may also be useful if the proposed database records the child's language skills which could be shared with appropriate health and social care professionals who could use this information to deliver bilingual service provision in line with the principles of the 'Active Offer'.

### **Question 26**

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.

Most of the responses to this question commented on themes already covered in the preceding questions. They have been summarised in the synopsis together with any other themes not specifically covered in the preceding questions.

## 4. Synopsis of database consultation responses

- 4.1. There was an overwhelmingly negative response to the proposals from individual respondents, though the statutory, public and representative bodies that responded were broadly in favour. However, the Children's Commissioner, in her response does not believe the proposals go far enough. A large proportion of individual responses also took the opportunity to express their views on a wide range of themes relating to home education beyond the scope of the question.
- 4.2. The requirement on local health boards and independent schools to disclose to local authorities information to assist in identifying children of compulsory school age in their locality currently not known to them.
  - 4.2.1. Public bodies were in favour of this proposal and agreed a LA can only fulfil their statutory duty to ensure that all children of compulsory school age are receiving a suitable education if they know of all the children that reside in their area. It is, therefore, reasonable and proportionate to require local health boards and independent schools to share basic information known to them. It was also noted that it would support work from a policing perspective, relating to the benefits, protection and support that being in school offers to vulnerable children at risk of exposure to criminality or exploitation.
  - 4.2.2. There were also benefits from an ALN perspective in recording ALN by type, which would allow LAs to assess whether there is a disproportionate number of children with ALN in EHE. This could be used to identify areas of concern, for example, where large numbers of children with ALN are being home-schooled. Assessments could be made as to the suitability of mainstream educational provision for children with ALN. Recording the presence of ALN would also help LAs to fulfil their duty to students with ALN who are home schooled.
  - 4.2.3. The response from the GMC noted the proposed regulations set out a blanket approach to information sharing which they believe would restrict the ability of doctors to use their professional judgment to decide whether sharing certain information would be in the best interests of the child or young person.
  - 4.2.4. Individual responses were opposed to the proposal including the comment that: "Whatever this regulation authorised would then be permitted within the Data Protection Act 2018 and the GDPR. But the regulations would still need to comply with the Human Rights Act 1998 (and its Article 8 in particular) so that becomes the focus of any legal challenge to the regulations".
  - 4.2.5. Other home educators noted this would be major state interference in the precious and confidential clinician-patient relationship, which is completely unethical and detrimental to patient care. Disclosure of details of all persons with parental responsibility would expose parent and child victims of domestic abuse to unwarranted risk. Many felt this to be a major infringement of basic civil liberties and human rights and the right to family and private life. They also felt the proposals seek to treat home-educated children very differently to children educated within state run

schools and that a lack of information on EHE children does not equate with risk of harm.

- 4.3. Whether the database will help LAs, as far as it is possible to do so, to identify children not currently known to them and/or children missing education in their area; and in the absence of a database what reliable and consistent alternative method would enable the LA to identify a child they have no prior knowledge of.
  - 4.3.1. LA responses noted that the database will enable LAs to have a reasonably comprehensive database of all children of compulsory school age in their area and this will help define children who are not receiving an education in school, however the database will not assist LAs in determining whether children are receiving a suitable education. The database will help identify children not known to LAs, but that would then result in an increased workload for officials in making further subsequent enquiries. The database on its own will not be enough to fulfil the LAs responsibility. The relevant data will need to be used consistently and appropriate action will need to be taken. A database with no accompanying action will not lead to any improvements to the outcomes for children.
  - 4.3.2. Again individual responses were against the proposal noting that the database will not help LAs as the draft regulations that set up the database are unlawful as, among other things, they breach Article 8 of the European Convention on Human Rights; and that it is wrong to suggest that LAs have a duty *"to identify children not currently known to them"*. Responses commented Section 436A does not impose such duty and LAs do not have such duty in any event.
  - 4.3.3. As for suggestions for alternatives it was noted that existing approaches are not reliable or consistent, including the use of the live birth registers and school deregistration notifications. It is difficult to foresee any other method being as reliable and consistent as a database that collates essential information about children of compulsory school age from a range of appropriate sources. Individual responses noted that: "lack of knowledge by an authority does not equate to increased risk and that it is better to build bridges of mutual respect, not smash down any existing communications by catastrophic continued attempts of smashing any shreds of communication and trust by continued draconian attempts by WG to bring in ill-thought out legislation based on suspicion, mistrust and institutionalised prejudice".
- 4.4. Whether respondents agree with an annual return of information from LHBs and independent schools; if not, how often should this information be provided to LAs; and the implications of a more frequent data return in terms of technical, administrative and resource implications.
  - 4.4.1. There was no consensus amongst organisations over the frequency of collection of data. Some felt annual was appropriate, others felt an annual response was unsuitable and places pupils who are not receiving a suitable education, at significant risk. They varied on how often data should be collected, ranging from termly (three times a year) and half-

termly. An annual collection point will mean that at any point in time the information contained in the database might be up to one year out of date and that subsequently children may slip through the net.

- 4.4.2. Individual responses reiterated the belief that there should be no disclosure and any such data collection is unlawful.
  - 4.4.3. In relation to the administrative and resource implications LA responses pointed out they do not have a specific worker whose role it is to ensure that all children of compulsory school age are receiving a suitable education. Therefore management of workload in addition to other roles and responsibilities could increase – for example home visits, updating the database to ensure that it is current, making enquiries with other authorities if it is believed the pupil has moved area, sending enquiry letters. There should be additional funding available to reflect the officers (education and other agencies) additional time and possible increased SAO applications due to evidence of child not in receipt of suitable education.
- 4.5. Whether anything in the draft regulations could have a disproportionate impact on those with protected characteristics.
- 4.5.1. Organisations that responded did not believe there would be any disproportionate impact, though one LA noted there could potentially be an impact on learners who have gender reassignment and who have elected to home educate due to gender reassignment issues.
  - 4.5.2. Individuals responded on the theme that the draft regulations are very broadly drafted to the extent that potentially the information could be used and/or shared for any purpose whatsoever and that would render them unlawful. On that basis, the draft regulations could lead to abuse and have a disproportionate impact, not only on those with protected characteristics, but any person whose personal data is entered into the proposed database. It could also have unintended consequences, for instance discourage some families from seeking medical care due to suspicion around data sharing.
- 4.6. Whether the proposals allow for the LA to meet their duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education.
- 4.6.1. Organisational responses noted that the proposed database may not guarantee that every child of compulsory school age in an area will be identified. However, it will provide a notably more reliable and consistent method for identifying children than is currently the case. LA responses noted that it allows the LA to identify those learners who are not educated in mainstream, special school or EOTAS provision, but it does not allow LAs to decide if the education is suitable.
  - 4.6.2. Individual responses felt the proposal reveals the intrinsic discriminatory attitudes behind such proposed legislation and will cause disengagement and suspicion not communication.

- 4.6.3. There was some confusion from organisational responses over whether the database would be voluntary and if it is then could parents ask for their details to be removed, parents choose not to provide details. Individuals were more supportive of a voluntary database.
- 4.7. The advantages, disadvantages and risks associated with disclosing data to populate the database.
- 4.7.1. Slightly more than half of all respondents to this question were unsure, neutral or chose not to comment. This could be a result of poor phrasing of the question or due to a lack of knowledge of the intended impact. Comments reflected that data disclosed will need to be reasonable and proportionate in order to not identify individual pupils within different authorities particularly those with smaller numbers of children identified as not receiving suitable education. Independent schools may perceive the request for information as time consuming and unnecessary and urged the Welsh Government to ensure that systems are in place to ensure that the data can be collected and submitted in such a way as to not increase the workload of school staff unnecessarily. Those individuals who responded reiterated that legal advice is that this regulation, if enacted, would breach the GDPR and Human Rights Act 1998.
- 4.8. The impact on the Welsh language.
- 4.8.1. Most respondents were unsure, neutral or chose not to answer this question, or felt there would be little or no impact. Of the comments received it was noted there is a lack of Welsh speaking professionals in this field. Another respondent commented that the database would need to be bi-lingual to allow people to work in the language of their choice in keeping with the current Welsh language law to treat both English and Welsh languages equally. It was also noted by one LA that there is the potential for a positive impact on the Welsh language if the database identifies children who would normally have no contact with the language in a completely non-Welsh speaking home. The LA could signpost to relevant resources if it was the families wish to learn Welsh.



## **5. Next Steps**

- 5.1. The Welsh Government welcomes the responses to the consultation.
- 5.2. Consulting on the database regulations has provided an insight on practical considerations and issues of concern. All of the comments received will be considered carefully before finalising the regulations.

## Annex 1

### Question 1

The draft regulations require local health boards and independent schools to disclose to local authorities (LAs) the information listed in Schedule 1 to the regulations. This will assist the LA in identifying children of compulsory school age in their locality currently not known to them.

- i) Do you think that the information requested is reasonable and proportionate? What are the reasons for your answer?
- ii) If you do not think that the information requested is reasonable and proportionate, what would you propose is the best way(s) for LAs to meet their duty to identify children of compulsory school age to ensure they are receiving a suitable education?

### Question 2

Currently there is a situation where LAs are responsible for children in their area that they do not know about. Under section 436A of the Education Act 1996 LAs 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 i) are not registered pupils at school, and ii) are not receiving a suitable education otherwise than at school.

- i) Do you think the database will help LAs, as far as it is possible to do so, to identify children not currently known to them and/or children missing education in their area?
- ii) What is the reason for your answer?

### Question 3

Without a database, what reliable and consistent alternative method would enable the LA to identify a child they have no prior knowledge of?

### Question 4

The draft Children Act 2004 Education Database (Wales) Regulations 2020 propose local health boards disclose the information in Schedule 1 to LAs annually. Do you agree with an annual return? If not, how often do you think this information should be provided to LAs and when would the most appropriate time be?

### Question 5

The Draft Education (Information about Children in Independent Schools) (Wales) Regulations 2020 propose independent schools disclose the information in Schedule 1 to LAs annually. Do you agree with an annual return? If not how often do you think this information should be provided to LAs and when would the most appropriate time be?

### Question 6

What would be the implications of a more frequent data return in terms of technical, administrative and resource implications on: LHBs, IS, LAs and other?

### Question 7

Who, within the LA, would need access to the database in order to carry out their functions?

### Question 8

Do you think anything in the draft regulations could have a disproportionate impact on those with protected characteristics, and if so, what?

**Question 9**

Does this proposal allow for the LA to meet their section 436A duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education?

**Question 10**

In order to identify the effectiveness of the database the Welsh Government will request from LAs an annual return on the number of children identified using the database not currently known to LAs. When would be the most appropriate and reasonable time to request this?

**Question 11**

Do you think a voluntary database of all statutory school-age children ordinarily resident within an LA area would assist LAs to meet their section 436A duty?

**Question 12**

What, if any, advantages and disadvantages do you think there would be in the disclosing of the required data to populate the database? Complete section relevant to you.

**Local Health Boards**

**Question 13**

Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

**Question 14**

Can you identify any key privacy risks and the associated compliance and corporate risks?

**Question 15**

Do you have any previous experience of this type of data disclosure/processing?

**Question 16**

What are the resource and technical implications of processing and disclosing the required data to LAs?

**Independent Schools**

**Question 17**

Can you identify any key privacy risks and the associated compliance and corporate risks?

**Question 18**

Do you have any previous experience of this type of processing?

**Question 19**

What are the resource and technical implications of processing and disclosing the required data to LAs?

## **Local Authority**

### **Question 20**

Is there anything missing from the Schedule of Information to be included in the database?

### **Question 21**

Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

### **Question 22**

Can you identify any key privacy risks and the associated compliance and corporate risks?

### **Question 23**

Do you have any previous experience of this type of processing?

### **Question 24**

We would like to know your views on the effects these draft regulations 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?

Question 25 – Please also explain how you believe the proposed regulations 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.

### **Question 26**

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.