

A. CHILDREN'S RIGHTS IMPACT ASSESSMENT

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

This Children's Rights Impact Assessment (CRIA) should be read in conjunction with the draft Statutory Guidance for Local Authorities on Home Education¹

The Children Act 2004 Database (Wales) Regulations 2020 will require each local authority to establish and populate a database of all compulsory school age children in their area in order to assist them in identifying those who are not on a school roll, education otherwise than at school (EOTAS) register or independent school. These regulations will also require local health boards (LHBs) to disclose to a local authority (LA) non-medical information to assist them in identifying children in their area. In addition the Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will require independent schools to disclose to a local authority information regarding learners registered at their establishment. Both regulations provide the legal basis for the disclosure of data by local health boards and independent schools to LAs. 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 Welsh Government has considered how best to enable local authorities to ensure children in their area are receiving a suitable education regardless of where that is delivered. We consider this proposal, on balance, to be a reasonable and proportionate approach.

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

¹ <https://gov.wales/sites/default/files/consultations/2019-07/draft-statutory-guidance-for-local-authorities-on-home-education.pdf>

to express his or her views freely in accordance with article 12 (1)². However, the Welsh Government recognises that expressing views is a choice for the child, not an obligation³ and that the child should therefore be sufficiently informed, through information and advice, to be able to exercise their right to make that choice.

Positive Impacts on Children and Young People

The database will assist local authorities:

- 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 support the objectives of the Additional Learning Needs (ALN) Bill once enacted, 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.

It will be important that children are able to access information about the regulations to ensure that all children realise their rights to receive a suitable education. We will be holding a series of consultation events across Wales on the draft regulations and will facilitate engagement with children and young people in this process. Making available to children and young people information and the opportunity to discuss their education provision and access to resources will uphold a number of their rights. This is 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

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 acknowledge that these proposals may be viewed by some as an infringement on their privacy. This in turn may mean some parents may not register with local health settings and so some children may not get receive timely healthcare. For those few who do not register with local healthcare provision, there may be a reliant on Accident and Emergency provision at hospitals.

² 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)

³ <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

The Minister for Education has previously stated that she is of the view this is a reasonable and proportionate step, however, this does, not preclude primary legislation further down the line, if that is deemed necessary .

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

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 Mission⁴ 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

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.

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

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 prepare the child for responsible life in a free society
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.

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 their fullest potential and to prepare the child for responsible life in a free society. 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 maintain and populate a reasonably complete 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. The state has a 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.

Previous decisions of the European Court of Human Rights have established that the child's right to education in Article 2 takes precedence over any parental right. In particular, it relied on the judgement in *Campbell and Cosans v UK* (1982)⁵ that the convictions of parents must not conflict with the fundamental right of the child to education; the whole of Article 2 of the first protocol being dominated by its first sentence.

This ruling is important as it positions a parent's right to home educate as 'conditional' rather than an 'absolute' right. This line of reasoning reflects the domestic law of England and Wales, namely that the right to home educate is an aspect of parental responsibility and conditional on the provision of a 'suitable' education

European Convention on Human Rights (ECHR)

In requiring LHBs and Independent Schools to disclose specific information to LAs about children will help to ensure that all children receive a suitable education.

The draft regulations are made under section 29 of the Children Act 2004 and require the establishment and population of a database and the disclosure of information. The Welsh Government is of the view these proposals are lawful, reasonable and proportionate.

⁵ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57455"\]}](https://hudoc.echr.coe.int/eng#{)