

Number: WG42006.



Welsh Government
Consultation – interim response

Consultation on Draft Regulations

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

Date of issue: February 2021

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made available April 2024

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This document is also available in Welsh.

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

Overview	This is the publication of the Database Regulations consultation responses
Action required	This document is for information only.
Further information	<p>Enquiries about this document should be directed to: Support for Learners Division Education and Public Services Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>e-mail: WELLBEINGshare@gov.wales</p> <p> @WG_Education</p> <p> Facebook/EducationWales</p>
Additional copies	Copies of all the consultation responses are published in electronic form only and can be accessed from the Welsh Government's website.
Related documents	The Database consultation documents : https://gov.wales/local-authority-education-databases

Context

In 2020 the Welsh Government undertook the consultation: *The Draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020*, which sought views in relation to draft regulations that will enable local authorities to compile a reasonably complete list of all children in the local authority area and the education that they are receiving.

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

The consultation took place between 30 January 2020 and 22 April 2020. As a result of the onset of the Covid-19 pandemic, the consultation was extended for a further 3 weeks and closed on 13 May 2020 28 September 2018.

The Regulations would enable each local authority to compile a reasonably complete list of all children of compulsory school age in their area. This would be achieved through the cross-comparison of education data, local health board data and data from independent schools to produce a list of children within the local authority area

We asked twenty six questions in the consultation about the draft regulations and received one hundred and fifty one responses.

In normal circumstances, an analysis and summary report would be published within twelve weeks of the closure of the consultation. However, the Covid-19 pandemic has had an unprecedented impact on resources and as a result this has not been possible.

In the interests of transparency, the decision has been taken to publish all of the consultation responses with appropriate redactions.

This is an interim response to the consultation. As and when resources allow an analysis of the consultation responses will be undertaken and a summary report published.

This is an extract from the original interim response by the Welsh Government to the 2020 Consultation on "the Draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020."

As explained on the previous pages it contained all the majority of responses received by the WG. The response below was from the General Medical Council, a statutory body which works with doctors, patients, and other stakeholders to support good, safe patient care across the UK.

One of the GMC's roles is to "investigate where there are concerns that patient safety, or the public's confidence in doctors, may be at risk, and take action if needed."

With this in mind we believe their response to the this consultation, will also helpfully inform the general public about concerns about the 2024 "Children missing education database" consultation (31 Jan to 25 Apr 2024)

The HE Byte Team

Relevant links:

Local authority education databases (2020) | GOV.WALES
<https://www.gov.wales/local-authority-education-databases>

Children missing education database (2024) | GOV.WALES
<https://www.gov.wales/children-missing-education-database>

Our role and the Medical Act 1983 - General Medical Council
<https://www.gmc-uk.org/about/what-we-do-and-why/our-mandate>

Welsh Consultations – The HE Byte
<https://he-byte.uk/welsh-consultations>

Response 140

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?

The overarching statutory objective of the General Medical Council (GMC) is to protect patients and the public. This objective is underpinned by three further objectives, including the promotion and maintenance of proper professional standards and conduct for members of the profession.

We provide guidance on the professional standards expected of all doctors registered in the UK. Our standards define what makes a good doctor by setting out the professional values, knowledge, skills and behaviours required of all doctors working in the UK.

Our guidance applies to all registered doctors regardless of their specialty, grade and area of work, therefore it is necessarily high level, in order to be widely applicable. As it can't cover all the situations a doctor might face in practice, we expect doctors to use their professional judgment to apply the principles the situations in which they find themselves.

We support the important goal of ensuring that all children and young people are receiving a suitable education. It is also important to consider this alongside the rights children, young people, their parents and indeed all patients, have for their personal information to be kept confidential.

We expect doctors to exercise their professional judgment in deciding how to meet the best interests of children under their care. This includes deciding when it is appropriate to share information about the patient. The standards we set for doctors, as set out in our guidance, strike a balance between sharing information for appropriate purposes (see below) and keeping patient information confidential in order to uphold the trust necessary to the doctor-patient relationship.

We are concerned that the proposed approach to the disclosure of personal information in the draft regulations is inconsistent with our guidance, doesn't allow room for professional judgment, and appears inconsistent with the common law duty of confidentiality.

The distinction between personal and medical information

Most importantly, the draft regulations draw a distinction between personal and medical information. In our understanding, all patient information attracts the common law duty of confidentiality. We don't set different standards for protecting clinical or medical information and other personal information, recognising the sensitivity of all information that is shared between a patient and doctor. We expect doctors to follow the approach in our guidance, when making a judgement about whether it is appropriate to share patient information with a third-party organisation.

When doctors can disclose personal information

In our guidance on Confidentiality: Good Practice in Handling Patient Information we recognise that although confidentiality is an important ethical and legal duty it is not absolute and state that personal information can be disclosed. Patient information can be disclosed in the following circumstances (see paragraph 9); a. The patient consents, whether implicitly or explicitly, for the sake of their own care or for local clinical audit (see paragraphs 13–15). b. The patient has given their explicit consent to disclosure for other purposes (see paragraphs 13–15). c. The disclosure is of overall benefit to a patient who lacks the capacity to consent (see paragraphs 41– 49). d. The disclosure is required by law (see paragraphs 17–19),

or the disclosure is permitted or has been approved under a statutory process that sets aside the common law duty of confidentiality (see paragraphs 20–21). e. The disclosure can be justified in the public interest (see paragraphs 22–23).

We reinforce this in our guidance on Protecting Children and Young People where we say public interest tests will involve consideration of whether the benefits to a child or young person that arise from sharing the information outweigh both the public and the individual’s interest in keeping the information confidential (see paragraph 31c).

Professional judgment in individual circumstances

The proposed regulations set out a blanket approach to information sharing which we 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. The use of individual judgment is particularly important in the context of children and young people.

In our guidance on child protection we encourage doctors, as a matter of everyday good practice, to work collaboratively with other agencies to promote the wellbeing of children and protect them from neglect or abuse. As an alternative to the proposed regulations, the Welsh Government could consider pursuing the goal to ensure all children are receiving an appropriate education within existing child safeguarding arrangements, which preserve room for voluntary cooperation and professional judgment.

Requiring doctors to share information about children and young people and their parents could cause some to disengage with health services, affecting not only their health but also potentially the health of their local communities.

Unless the draft regulations intend data to be extracted from GP or other health records, doctors will have to make proactive enquiries of children, young people and their parents. Doctors will require clear guidance on, the types of questions they should routinely be asking of school age children, young people and their parents, and the degree to which children, young people, parents and those providing home schooling can control the extent of personal information that might be shared. The regulations would also need to clearly set out what actions may flow from the sharing of information, in order to ensure doctors can be clear with children, young people and their parents, about the nature, purpose and consequences of sharing this information.

We expect doctors to make sure that patients know what information is being shared about them, and to obtain consent to sharing, unless doing so would undermine the purpose of the disclosure – for example, where informing them would prejudice the prevention, detection or prosecution of a serious crime (see paragraphs 12, 18 and 19 in Confidentiality)..

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. 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? 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:

lxx) local health boards

lxxi) independent schools

lxxii) LAs

lxxiii) 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.

xc) Parents/carers

xcii) Children and young people

xciii) Local health boards

xciii) Independent schools

xciv) LAs

xcv) Other

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?

In our guidance on Confidentiality we are clear that the duty of confidentiality continues after the death of a patient (see paragraph 134). The circumstances in which personal information may be disclosed after death are set out in paragraphs 135-8.

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?

LAs

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:

- xliii) opportunities for people to use Welsh
- xliv) 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?

Supporting comments

Question 25 – Please also explain how you believe the proposed regulations could be formulated or changed so as to have:

- xxxvii) 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
- xxxviii) 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.

Supporting comments

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.