

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

Consultation response form

Your name:

Organisation (if applicable):

e-mail/telephone number:

Your address:

Responses should be returned by **22 April 2020** to:

Learner Support Team
Support for Learners
Education and Public Services Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: WELLBEINGshare@gov.wales

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?

No, this is neither reasonable nor proportionate.

- ◆ Is the educational status of your child necessary for medical care?
- ◆ Should your GP and other medical staff be questioning you about education?
- ◆ Should medical staff be asking you about-

- Your education status intentions for the next 3 years?
- Who takes care of your child and when in the day?
- Who has parental responsibility and what their details are?
- Who teaches your child and what their contact details are?
- Which educational groups your child attends and when they attend/ed?

It would breach the Human Rights Act 1998 (HRA 98) and the GDPR.

- ◆ Is it right that someone else's data is shared without their consent by the medical staff?
- ◆ Is it right that everyone else who has any care or educational connection with your child should have their data shared by you?

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?

- ◆ Not reasonable, not proportionate.
- ◆ It is not their duty to ensure a child receives a suitable education it is a parent's duty to 'cause him to receive efficient full-time education suitable' (s7 Education Act 1996)
- ◆ Is this the same as monitoring?
- ◆ Better ways? Would engaging with the diversity of HE work? Sticking to the law?! Training in diverse educational approaches?

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?

No it will not help.

The LA are not 'responsible' for the children.

'So far as it is possible to do so' includes sticking to what is legally possible!

- ◆ Why do people want to stay off the radar?
- ◆ Why is not being a piece of data a problem when there's no evidence against the person
- ◆ Would people engage more with more respectful LAs?
- ◆ What other positive things can an LA do to increase engagement?

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?

Again, identifying children is not their remit, identifying actual ‘problems’ is.

- ◆ Is there evidence that the current system of reporting is not enough?
- ◆ Is respect, lawful behaviour, recognition of diversity a better way to promote engagement?

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?

No.

- ◆ Do they actually need this information to fulfil their duties?
- ◆ Are there other ways that professionals can report concerns? Yes.
- ◆ When do professionals report concerns?

Never

- ◆ Should they only stick to reporting when ‘concerns’ are raised?

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?

No.

- ◆ Do you think this is needed?
- ◆ It is already covered by the Education (Pupil Registration) (Wales) Regulations 2010, which apply to ‘every school’ in Wales
- ◆ Is having the same piece of legislation in two different places necessary?

Question 6 – What would be the implications of a more frequent data return in terms of technical, administrative and resource implications on:

i) local health boards

- ◆ Is this potentially more GDPR and HRA 98 breaches?
- ◆ Can, and should, a medical facility be expected to cope with this extra workload?
- ◆ Could that extra load be accommodated during another pandemic crisis?
- ◆ Is paying for more paperwork and more staff time a good use of resources?
- ◆ Is there any evidence this is necessary?
- ◆ Is this in the public interest?
- ◆ Could there be any effect on staff?

ii) independent schools

Independent schools already have a duty to provide returns within 10 days of a child leaving the school. (PRR)

iii) LAs

- What is the cost for all this new, extra data handling?
- Who does the job? Will it be subcontracted?
- Is that the best use of limited funds?
- Could tying up data handling for persons of no concern impact upon the efficiency of handling data of those who are known to be a concern?

iv) other.

- How will this impact on children and parents?
- How often will GDPR and HRA 98 be breached for HE families?
- Will families subjected to unnecessary state interventions begin to avoid seeking medical attention?

Question 7 – Who, within the LA, would need access to the database in order to carry out their functions?

- Does s9 gives too many people access?
- Which functions would that be?
- Where are the limits on how the data will be used?
- Can someone with more than one roll misuse the data? How many LAs have dedicated HE workers who only do that job?

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. Data sharing without people's consent.

- Are there any protected status people who are currently more guarded about privacy for perfectly legitimate or cultural reasons? Traveller communities?
- Grandparents, great aunts and uncles, older helpful neighbours who are retired?
- Ethnic minorities?
- Disabled?
- What about domestic abuse victims? Does this place them in potential danger?
- Does the risk outweigh any perceived benefits?
- What are the dangers of data sharing being mishandled?

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?

- How does this compare to data sharing in the 'named persons' farce for Scotland?
- Does this allow for greater state intervention unnecessarily? For people whose education IS suitable?
- How does unprecedented data sharing in breach of GDPR, HRA and doctor patient relationship conform to 'in so far as it is reasonable to do so'?

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?

It is not reasonable. The use of 'will' speaks of a done deal.

- Why is a data base 'effective' in finding something you have NO DUTY to know?
- Will there be financial incentives to staff, similar to paid visits in England?
- Is this monitoring in disguise?
- Is this likely to become even more invasive?

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?

- Potentially, will people who are providing suitable education will come forward?
- What kind of LA behaviour would initiate voluntary contact?
- Does voluntary mean the right to withdraw if dissatisfied with the LA behaviour?

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.

i) Other

Are there any advantages?

Disadvantages

- Are medical staff ethically happy for this level of data harvesting and sharing to go on?
- What will it do to the vital relationships and trust with medical practitioners?
- Would you be as willing to get medical care?
- What about non-emergency, routine care?
- Would you 'wait longer' to seek attention?
- What could happen to domestic violence victims with data sharing?
- What about minorities?
- Is this an abandonment of various rights for HE families only (school parents have already shared the data willingly)?
- What about GDPR?
- What about Individual rights to privacy under the HRA '98, Article 8, right to privacy?

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?

Do you trust LAs not to mess this up?

Question 14 – Can you identify any key privacy risks and the associated compliance and corporate risks?

Legal advice is that this regulation, if enacted, would breach the GDPR and Human Rights Act 1998.

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?

- Why should the LA be asked if they want more?

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 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?

Supporting comments

None.

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.

Supporting comments

None.

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.

- Does this sound like a pre-determined issue?
- Has this document given a satisfactory reasons and legal grounds for needing to breach HRA and GDPR?
- Do you think they make any mention of whether they relate to The Children Act 2004 s25, s28, or the Education Act 2002 s175.

- Is s9 is too wide?
- Can Regulation 8 (Archiving) be justified, for someone out of school and no longer CSA?
- What about the effect on the confidential relationship between doctors and patients?
- Did anyone ask the medical profession if they feel there is a conflict with their key principles and ethics?
- Is HE a medical issue?
- Is HE a safeguarding issue?

- Is being reported by medical staff simply for making a lawful educational choice an ethical action?
- Will this damage trust with the medical profession?
- Is there any evidence in here of bias against HE within Welsh Assembly Government?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: