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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Home Education – Statutory Guidance for Local Authorities and a Handbook for Home Educators

Date of issue: 29 July 2019

Action required: Responses by 21 October 2019

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

Home Education – Statutory Guidance for local authorities and a Handbook for Home Educators

Overview

The Welsh Government is committed to ensuring all children in Wales receive a suitable education. This consultation is seeking views on draft statutory guidance to assist local authorities in identifying children of compulsory school age not known to them and in ensuring these children are receiving a suitable education.

How to respond

The closing date for responses is 21 October 2019 and you can respond in any of the following ways:

Email: Please complete the consultation response form and send it to:

WELLBEINGshare@gov.wales
WELLBEINGshare@llyw.cymru

Please include **'The home education consultation – WG35754'** in the subject line.

Post: Please complete the consultation response form and send it to:

The Home Education Guidance Consultation
Pupil Wellbeing Team
Support for Learners Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ



@WG_Education



Facebook/EducationWales

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at gov.wales/consultations

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Tel: 01625 545 745 or

0303 123 1113

Website: <https://ico.org.uk/>

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Ministerial foreword

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.

Education in Wales: Our national mission sets out the action required to fulfil our ambition that children and young people in Wales are equipped with the right skills for a changing world. Although 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 – and the rights of all children to receive an education – should apply equally to those who are home educated.

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.

Every child has a fundamental right to an education and it is the duty of the parent of a compulsory school age child to ensure that suitable education is being provided. Much of a child's early development takes place entirely in the home environment. As children grow and develop most parents choose to send their children to school; however some elect to continue their child's educational development within the home. The Welsh Government respects the choice of some parents to home educate their children and the proposal in this consultation document is not about removing that choice. Home education is a key aspect of parental choice. Balanced with that choice is the best interests of the child and the expectation that local authorities can assess the effectiveness of parental provision to ensure it will cause the child to receive a suitable education.

This consultation seeks views on draft statutory guidance for local authorities to assist them when assessing the suitability of the education provided by parents for home educated children of compulsory school age, as well as a handbook of support for home educating families.

Using existing powers found in section 29 of the Children Act 2004 the Welsh Government intends to make regulations requiring:

- Local authorities to establish and maintain a database to assist them in identifying children not on any maintained schools roll, not on any education other than at school (EOTAS) roll, or independent school roll, and not receiving a suitable education.
- Local health boards (LHBs) to disclose to local authorities specified, limited, non-clinical information about a child who is ordinarily resident in that local authority's area.
- Independent schools to share data on the pupils registered with them with the local authority.

The draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020 will provide the legal framework for these proposals. We will consult separately on the draft regulations. We will continue to work closely with key stakeholders including local authorities, home educating communities, children, young people and families during the consultation, providing further opportunities for views on the proposals to be heard. The consultation

ends on 21 October 2019. We aim to publish a response to the consultation at www.beta.gov.wales/consultations by the end of the year.

I would like to take this opportunity to thank the local authority home education officers, the Welsh Local Government Association (WLGA), and Estyn colleagues who have been involved in the development of the statutory guidance. In addition, I would like to thank the Children's Commissioner for Wales (CCfW), the Association of Directors of Education Wales (ADEW), and Association of Directors of Social Services (ADSS) for providing critical feedback and suggestions. Furthermore, I would like to thank those home educating parents who have provided input into the development of the handbook.

This consultation provides an opportunity for everyone to have their say to help us ensure the approach we are developing is reasonable and proportionate and in the best interest of learners.

I look forward to receiving your views on the proposal.



Kirsty Williams AM
Minister for Education

1. Background and context

The national strategy “Prosperity for All”¹ published in September 2017, demonstrates the Welsh Government’s recognition that an individual’s childhood experiences play a significant part in shaping their future and are critical to their chances of going on to lead a healthy, prosperous and fulfilling life.

Since the enactment of the Rights of Children and Young Persons (Wales) Measure 2011², all Welsh Ministers have been under a statutory duty to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) when exercising any of their functions. This duty is critical in securing positive outcomes for children and young people in Wales by creating a culture which respects, promotes and upholds children’s rights.

Parents may educate their children at home providing they fulfil the requirements of section 7 of the Education Act 1996, which states ‘the parent of every child of compulsory school age shall cause him to receive efficient full–time education suitable

- to his age, ability and aptitude, and
- to any special educational needs he may have,
- either by regular attendance at school or otherwise’.

Parents can fulfill this duty by sending their child to school on a regular basis or otherwise (e.g. by educating them at home). For the purposes of this consultation document the term ‘parent’ includes any person with parental or caring responsibility.

Section 436A of the Education Act 1996³ places a duty on local authorities to make arrangements to enable them to establish (so far as is possible to do so) the identities of children in their area who are of compulsory school age but:

- are not registered pupils at a school, and
- are not receiving suitable education otherwise.

On 30 January 2018 the Cabinet Secretary for Education announced her intention⁴ to use existing powers found in section 29 of the Children Act 2004 to make regulations to require local authorities to establish a database to assist them in identifying children not receiving a suitable education.

These regulations will be consulted on separately in the coming months. This consultation seeks views on the content and suitability of the statutory guidance issued under section 436A of the Education Act 1996 to support local authorities in arrangements to assess the suitability of education provided to home educated children.

This consultation also seeks the views on the content and suitability of the package of support to home educators, including the handbook for home educators. The level of support for and access to services by home educators is inconsistent across local authorities. Home educators have indicated that they experience a disparity in terms of support to access universal services and benefits available between children and young people in mainstream education and those who are home educated. In developing these proposals we have considered how to strengthen the support available to home educators

¹ www.gov.wales/prosperity-all-economic-action-plan

² www.legislation.gov.uk/mwa/2011/2/contents

³ www.legislation.gov.uk/ukpga/1996/56/section/436A

⁴ www.gov.wales/about/cabinet/cabinetstatements/2018/eotas/?lang=en

by clarifying referral pathways to education support and services, as well as universal and specialist support services.

The proposal is therefore one part of the wide ranging action the Welsh Government is taking to support children and young people to have the best start in life.

2. The issues

The Welsh education system is predicated on providing a range of choices to meet the different needs and abilities of learners of all ages.

Welsh local authorities are under a duty to make arrangements to identify children who are not receiving suitable education and who are not registered at school – this can include those children who are home educated as well as those children who are not being educated at all. Local authorities have repeatedly argued they have difficulty meeting this requirement as there is no duty on parents to ‘register’ they are home educating, and that they do not have the requisite powers to assess the education that home educated children receive.

Local authorities have historically wanted legislation to place a duty on parents to register with them when they intend to home educate their children. This has been echoed by the Children’s Commissioner for Wales and the National Independent Safeguarding Board (NISB) who have called on the Welsh Government to introduce legislation for a register of home educated children. A report⁵ published by the Children’s Social Care Research and Development Centre (CASCADE) in October 2017 recommended that ‘there should be a register of home educated children in a similar way to the school register’. Local authorities are of the opinion they require more legal powers to identify home educating families, make assessments of the education they are providing, and take action where necessary, for instance when a suitable education is not been provided, will enable them to discharge their legal duty.

3. The Welsh Government response to issues raised

The statutory guidance does not remove a parent’s choice to home educate, the guidance seeks to ensure that all children regardless of where they are educated, receive a suitable education.

The Welsh Government respects the decision by some parents to educate their children at home, but this choice must be balanced with the absolute right of children to receive a suitable education. We acknowledge that most home educating parents will be providing a suitable education and are doing so in the best interests of the child. However, there will be a small number of instances where this is not the case, which is why we are taking these steps in order to protect the rights of children and young people.

Non–statutory guidance was issued to local authorities in respect of home educated children in January 2017. However, local authorities have called for more robust guidance in terms of identifying children and young people not receiving a suitable education, and on assessing the suitability of home education.

⁵ www.safeguardingboard.wales/2017/11/23/home-education-children-report-2/

Where a child attends school, the duty to inform local authorities of the decision by parents to home-educate rests with the school not the parent (unless the child attends a special school, in which case the onus rests with the parent to liaise with the local authority). The difficulties for local authorities in identifying home educated children arise when parents choose to home-educate their child as soon as they reach compulsory school age (i.e. the child was never entered onto a school register) or when families move from one local authority area to another, without informing the new local authority they are home educating. This can include children who are not being educated at all (children missing education).

4. The proposal

Draft statutory guidance

To support local authorities to identify children and young people not on a maintained school register, not in EOTAS, not on an independent school roll and not receiving a suitable education, we have developed statutory guidance.

This consultation seeks views on the content and suitability of the proposed statutory guidance. The statutory guidance will assist local authorities to carry out their duty to ensure children receive a suitable education. In addition to providing clarification on the characteristics of a suitable education, the statutory guidance reinforces the levers available to local authorities to use when a suitable education is not being provided.

The statutory guidance also clarifies the support local authorities could make available to home educators in their area.

Home educators are not required to follow a particular curriculum, or adopt school-based approaches, nor will their children be required to take any national exams or assessments. This proposal does not change that position. However, a parent is required by law to ensure that their child receives a full-time efficient education suitable to the child's age, aptitude, ability and any special educational needs they may have.

Draft Handbook for Home Educators

This consultation is also seeking the views of stakeholders on the content and suitability of the Handbook for Home Educators. This includes: the development of a home education page on Wales' digital learning platform Hwb, help with exam registrations, information on accessing universal services and an offer of support from Careers Wales.

A number of universal health, care and support services and youth services are facilitated through school, which may mean that some home educated children and their families may not be aware of their entitlements and potentially miss out on key initiatives and services. As we continue to develop the package of support on an ongoing basis we will continue to engage with home educating families to understand what help and support would be useful.

Home education database

On 30 January 2018, the Minister for Education outlined her intention to develop regulations which will require local authorities to establish a database of children in order to identify those who are not on a school roll, EOTAS register or independent school roll and not receiving a suitable education. These regulations will also place a duty on local health boards (LHBs) and independent schools to share a minimal amount of non-clinical information to populate the database. The data provided by LHBs will be cross-matched against school rolls, EOTAS registers and independent school rolls to produce a list of

children not known to the local authority. This will enable local authorities to compile a reasonably complete database of children not on any education register, and to conduct enquiries into the provision and suitability of their education.

The Welsh Government is currently undertaking an extensive scoping exercise with stakeholders to consider the requirements of the database, existing software available, and any practical or legal limitations. As a result, the regulations for the database will be consulted on later this year.

5. Conclusion

The overriding priority of this approach is to support local authorities in ensuring that children and young people are receiving a suitable education and to clarify the position in relation to the existing levers already at their disposal.

This will reinforce the Welsh Government's commitment to ensuring children and young people receive a suitable education, and that that all children in Wales are given the chance to thrive and fulfil their potential.