

Explanatory Memorandum to the inclusion of UCAS in the Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the amendment to the Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022.

Jeremy Miles MS

Minister for Education and Welsh Language
14 June 2022

Description

1. These Regulations extend the ability of Welsh Government to share data on individual pupils in Wales with the Universities and Colleges Admission Service (UCAS).

Matters of special interest to the Legislation, Justice and Constitution Committee

2. None.

Legislative background

15. Under s.537A of the Education Act 1996, Regulations may be made to prescribe persons with whom data may be shared. The Education (Information About Individual Pupils) (Wales) Regulations 2007, currently permits data to be shared with a list of certain prescribed persons including Qualifications Wales and Ofqual but UCAS is not currently in that list. Subject to approval, the intention would be to amend the existing Regulations to add UCAS to the list of prescribed persons to whom Welsh Ministers may provide individual pupil information.
16. An amendment is also required to ensure that sharing personal data with UCAS meets one of the lawful bases in Art 6(1) UKGDPR. The usual lawful basis relied on is Art 6(1)(e) where processing is necessary for the performance of a public task but in the absence of a statutory power, LS is of the view that none of the lawful bases in Art 6(1) are appropriate.
3. These sections give the Welsh Ministers the power to make Regulations in relation to the provision of information to third parties by Welsh Government.
4. The Regulations are being made under the negative procedure.

Purpose and intended effect of the legislation

5. To widen participation to HE and ensure parity for disadvantaged learners in Wales with the rest of the UK, we are looking to implement a permanent legislative change to allow Welsh Ministers to share the FSM data of school leavers (in year 13) with UCAS.
6. UCAS will undertake a data matching exercise to provide an FSM marker on the applications they receive from Welsh learners. This will provide contextual information to aid university admissions in ensuring offers are made to disadvantaged learners and participation to HE is widened.
7. The addition of UCAS to the named parties listed in the Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022 will enable Welsh Government to share this data.

Consultation

8. There is no statutory duty to consult in relation to these regulations.
9. This amendment has been deemed urgent in order to have data in place for universities to use in the clearing and confirmation process in August. Therefore any consultation would not take place at a formative stage in the policy development (in line with Gunning principles) and therefore was not viewed as appropriate in this case.

Regulatory Impact Assessment

10. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations.
11. Due to the likely costs and benefits of complying with these Regulations, it is not considered necessary to carry out a Regulatory Impact Assessment. The implications of putting the Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2022 in place is that the Welsh Government will share a dataset with UCAS once every academic year, and is therefore of very minimal cost or burden and poses no burden on those outside of Welsh Government.