

Explanatory Memorandum to the Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025.

I am satisfied that the benefits justify the likely costs.

Lynne Neagle MS
Cabinet Secretary for Education
12 March 2025

PART 1

1. Description

These Regulations place a statutory duty on proprietors of independent schools in Wales to share information about children on roll with them, with the local authority where the child is ordinarily resident. The information is required by the local authority so that they can be assured that the child is not missing education (CME) and be assured that they do not need to undertake enquiries in relation to that child.

These Regulations are being made for pilot purposes only and cease to be in effect six weeks after they come into force.

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

The Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025 (“the information regulations”) will come into force on 8 April 2025. These Regulations follow the negative procedure and place a requirement on proprietors of independent schools in Wales to provide information about children on roll with them, to the relevant home local authority. The information regulations will enable local authorities to be assured that these children are not missing education, and be assured that their duties are met in respect of these children.

The Regulations will cease to be in effect six weeks from the date they come into effect, and will apply to the seven local authorities participating in the ‘children missing education database pilot’. The pilot local authorities are named within the Regulations.

The Regulations will be made alongside the Children Act 2004 (Children Missing Education Database) (Pilot) (Wales) Regulations 2025 (“the database regulations”).

3. Legislative background

The Regulations will be made under existing powers under section 537A of the Education Act 1996.

The relevant functions of the Secretary of State in the Education Act 1996 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Section 71 of the Government of Wales Act 2006 allows the Welsh Ministers to do anything conducive or incidental to any of their other functions.

4. Purpose and intended effect of the legislation

The purpose of the information regulations is to assist local authorities to undertake their duty under section 175 of the Education Act 2002, which is to make arrangements to undertake their education functions with a view to safeguarding and promoting the welfare of children¹. The regulations will help local authorities to meet their existing duties as set out in the Welsh Government's "Help prevent children and young people missing education" statutory guidance² ("the CME guidance").

"CME" are children who are not on roll at school, not in education other than at school (EOTAS), and children who are reported to be EHE but the LA has not determined that they are in receipt of a suitable education. CME does not include children who are EHE where the local authority has determined that the education at home is suitable, and it does not include children who are on roll at school but do not attend regularly.

Local authorities do not routinely hold information about children living in their areas who are on roll at independent schools in Wales, meaning that the numbers of children attending independent schools cannot be separated from estimated numbers of children who may be CME. The information regulations place a requirement on proprietors of independent schools in Wales to provide this information to the relevant local authority, so that they can be assured that their statutory duties are met in respect of those children.

The information regulations will provide local authorities with basic information about children living in their areas who are registered at independent schools. This will enable the local authority to make a record of this cohort of children, thereby reducing the number of children who are unaccounted for in the local authority's education records, and providing a more accurate picture of the number of CME.

The relationship between missing education and safeguarding and welfare is well established. The Welsh Government's statutory CME guidance states that if a child or young person is receiving an education, not only do they have the opportunity to fulfil their potential, they are also in an environment which enables local agencies to safeguard and promote their well-being. If a child or young person goes missing from education, they could be at risk of significant harm. Research has shown that those children and young people who are not receiving an education are more likely to engage in criminal and anti-social behaviour, be at risk of harm from sexual exploitation and victimisation, abuse drugs and alcohol and be illegally employed.

¹ <https://www.legislation.gov.uk/ukpga/2002/32/section/175>

² <https://www.gov.wales/statutory-guidance-help-prevent-children-and-young-people-missing-education>

The information regulations will be made alongside the database regulations to support the CME database pilot. The database regulations place a requirement on local authorities participating in the pilot to establish a 'children missing education' database. There is a separate duty on local health boards (LHBs) to share basic, non-clinical information about children registered with general medical services contractors (GPs), with the relevant local authority. The information from LHBs will be cross-referenced with the LA education data and the information from independent schools, to establish which children are unaccounted for.

5. Consultation

The Welsh Government undertook a 12-week consultation³ on Draft Children Act 2004 Education Database (Wales) Regulations in 2020 ("the 2020 database regulations") and on Draft Education (Information about Children in Independent Schools) (Wales) Regulations 2020 ("the 2020 information regulations"). Both sets of draft Regulations supported the same proposal and would allow local authorities to cross reference information from local health boards and independent schools to correctly identify children who may be CME. The 2020 database regulations included a requirement for local authorities to record information about *all* children in Wales, rather than just those who were potentially missing education.

A summary of the responses from the 2020 consultation is included on the Welsh Government website - [Local authority education databases | GOV.WALES](https://www.gov.wales/local-authority-education-databases)

A further consultation on revised database proposals was undertaken in 2024, due to changes to the overall policy aim and a reduction in scope of the database regulations.

The summary of responses from the 2024 consultation is on the Welsh Government website - [Children missing education database \[HTML\] | GOV.WALES](https://www.gov.wales/children-missing-education-database).

As no issues were raised in relation to the 2020 information regulations the Welsh Government did not consult on these Regulations a second time.

³ <https://www.gov.wales/local-authority-education-databases>

PART 2

Regulatory Impact Assessment for the Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025

Introduction

1. This Regulatory Impact Assessment has been developed to consider the implications of proposals to require proprietors of independent schools in Wales to provide information about children who are on roll with them, to the local authority where the child is usually resident.

Policy context

2. The Welsh Government has statutory guidance⁴ in place for local authorities to support them to establish the identities of children residing in their area who are not receiving a suitable education. The guidance outlines the steps the local authority should follow once a child who is CME (or at risk of CME) is identified, and advises on actions to take to identify unknown children. During development of the guidance local authorities specified five areas that were key to the effective delivery of their statutory duties. These were:
 - strategic management & leadership;
 - information systems;
 - networks and points of contact;
 - securing education provision;
 - effective monitoring systems.

Independent schools

3. Local authorities hold information about children attending maintained schools and those attending alternative local authority provision via EOTAS. They also hold a list of children who are electively home-educated (EHE), provided that those children were previously on-roll at school prior to becoming EHE. Local authorities do not routinely hold information about children attending independent schools.
4. Latest data indicates that the number of children attending independent schools in Wales is around 8,000⁵. Local authorities may have information about some children who attend independent schools but not all. Information that they hold would usually be provided via an agreed

⁴ [statutory-guidance-help-prevent-children-young-people-missing-education.pdf](#)

⁵ [Children missing from state education: estimating numbers using linked administrative data | GOV.WALES](#)

data sharing arrangement between a local authority and an individual independent school, or via information provided by a parent or carer.

5. Placing a requirement on independent schools (via Regulations) to provide information about pupils on roll would enable the local authority to record the information on its existing education systems. This would result in a more complete picture of the education provision received by children living in the local authority area, and assure the LA that this cohort of children can be removed from the LA's CME estimates. It would also support local authorities to manage and maintain effective information and monitoring systems for their education data, thus helping them to undertake their statutory duties.

Children missing education (CME)

6. The rights of all children to receive an education apply equally. These proposals support the goal of a more equal Wales, a society that enables people to fulfil their potential no matter what their background or circumstances (including socio-economic background and circumstances).
7. Section 175(1) of the Education Act 2002 requires a local authority to make arrangements for ensuring their education functions are exercised with a view to safeguarding and promoting the welfare of children. In addition to any physical harms, promoting children's welfare includes preventing harm to a child's physical, intellectual, emotional, social or behavioural development. Children who do not receive their right to an education are unable to fulfil their potential, have fewer prospects in adulthood and a reduced chance of succeeding later in life.
8. Currently, local authorities are unable to meet their section 175 duty in full as they do not know about all children living within their areas. This may be because a parent has moved to the area and not notified the LA or registered the child at school, or because a child has never attended school and the parent has not notified the local authority that they are educating at home. Regardless of the circumstances, local authorities are unable to meet their statutory duties if they do not know about a child or have information that confirms how they are receiving their education. These children are potentially children missing education or "CME" and the local authority is under a duty to make arrangements to identify them.
9. Existing legislation does not require parents and carers to notify the local authority that they are home-educating their child(ren). If a child has

never been to school the local authority will not be aware of them unless the parent notifies them that they are living in the area and educating their child at home. The local authority is therefore unable to undertake its statutory duties in respect of these children, including undertaking an assessment of the education provision to determine whether it is suitable and efficient. Whilst it is likely that the majority of EHE children are in receipt of a suitable education, there may also be children who are not receiving an education at all. Until the local authority is assured that an EHE child is receiving a suitable education then the child is potentially CME and the Welsh Government's statutory guidance on children missing education⁶ will apply. The CME category therefore includes a sub-set of EHE children.

Elective home education (EHE)

10. There is a separate duty on local authorities under section 175 of the Education Act 2002 to 'undertake their education functions with a view to safeguarding and promoting the welfare of children'. This duty applies to all children, regardless of how they are educated. The aim of the regulations is to ensure local authorities know which children are potentially missing education and meet their section 175 duty. Once the names of these children are known, then the local authority can – in accordance with their wider duties under section 436A - determine whether these children are receiving a suitable education. Currently local authorities are unable to meet these duties as they are unable to identify all children they have responsibility for. This applies to EHE children, as well as children attending independent schools.
11. Whilst there is no evidence that being home-educated is in itself a safeguarding risk, children who are not seen on a regular basis by professionals with safeguarding duties are more likely to be at risk. Even if a child is *not* at risk of physical harm, missing education is in itself a welfare issue as that child is not receiving their right to education. Children and young people not receiving a suitable education are also at increased risk of a range of negative outcomes that could have long-term damaging consequences for their life chances. If a child or young person is receiving a suitable and efficient education, not only do they have the opportunity to fulfil their potential, they are also in an environment which enables local agencies to promote their well-being. A child who is not in receipt of a suitable and efficient education is

⁶ [statutory-guidance-help-prevent-children-young-people-missing-education.pdf](https://gov.wales/statutory-guidance-help-prevent-children-young-people-missing-education.pdf)

considered to be missing education or “CME” and are within scope of the Welsh Government’s statutory guidance⁷.

Options

12. Two options were considered for the purposes of this Regulatory Impact Assessment. **Option 2 is the preferred option.**

- Option 1 - Continue the status quo – i.e. do nothing / do the minimum
- Option 2 - Make regulations to (a) require each individual local authority to establish a database of compulsory school age children in their area who may be missing education, and (b) require local health boards and independent schools to share specific data with local authorities. This will allow local authorities to identify children known to health services and independent schools but who are currently not known to the LA. **This is the preferred option.**

Option 1: Continue the status quo (do nothing / do the minimum)

13. This option would rely on the current statutory guidance for CME without further changes to policy to support local authorities to identify children not known to them, including those on roll at independent schools. The current statutory EHE guidance would also remain in place. LAs would be expected to rely on processes as outlined in the current statutory guidance, including establishing or utilising voluntary data sharing arrangements and good practice with other agencies.

Context

14. One of the key drivers for the proposals is the Welsh Government’s long-standing commitment to children’s rights under the United Nations Convention on the Rights of the Child (UNCRC)⁸. Since the enactment of the Rights of the Children and Young Persons (Wales) Measure 2011⁹, Welsh Ministers are required to have due regard to the UNCRC when making decisions. This 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. Under the UNCRC all children have a right to education. Additionally, the Welsh Government

⁷ [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](https://gov.wales/statutory-guidance-help-prevent-children-young-people-missing-education.pdf).

⁸ https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary-1.pdf

⁹ <http://www.legislation.gov.uk/mwa/2011/2/contents>

believes that a child's educational journey should be one of the most enriching and rewarding times of their life.

15. Non-statutory EHE guidance was issued in 2017. The guidance was intended to set a new context for developing positive relationships and mutual respect between local authorities and the home educating community. However, local authorities argued that it was ineffective in assisting them to undertake their statutory duties and requested strengthened guidance, on a statutory basis. Statutory guidance was therefore published in 2023¹⁰ and aimed to clarify the balance between the rights of the parents to home-educate, the rights of the child to receive a suitable education, and the responsibilities of local authorities. Whilst the guidance does not require home educators to notify the local authority that they are home-educating, it states that if a local authority is not able to determine that an EHE child is in receipt of a suitable education, the child is in scope of the CME guidance.
16. Under Option 1, the current statutory guidance would remain in place in this Assembly term but nothing more. Local authorities would be expected to continue with current informal data-sharing arrangements, or establish new voluntary arrangements with other agencies, as per the guidance. Key engagement about EHE and CME would continue with local authorities but they would continue to seek further support by way of legislation or strengthened guidance, to enable them to undertake their existing statutory duties – or introduce additional ones.
17. The Children's Commissioner for Wales has highlighted the Welsh Government's inaction in this area and has called for primary legislation¹¹. Despite the move in 2023 to statutory guidance from non-statutory guidance for EHE, this still does not address the main concern that local authorities are unable to identify all children within their boundaries. They are therefore unable meet their safeguarding and welfare duties in respect of these children.
18. Whilst there are not concerns about children who are on roll at independent schools, the inability of local authorities to identify those children means that this cohort is currently included within the numbers of potential CME, resulting in inaccurate estimates and inability of local authorities to undertake their statutory duties. To meet this objective, a mechanism to support the statutory EHE and CME guidance would be required.

¹⁰ [Elective home education guidance | GOV.WALES](#)

¹¹ [A Review of the Welsh Government's exercise of its functions: Home education and Independent Schools - Children's Commissioner for Wales](#)

Costs

19. There are no additional costs for the Welsh Government, local authorities or independent schools associated with this option.

Benefits

20. A potential benefit of the do nothing / do the minimum option would be no additional direct costs. Option 2 would incur costs on public services and potentially the justice system.

Disbenefits

24. There are a number of disbenefits associated with Option 1. Primarily it does not seek to address any of the concerns raised by local authorities and other stakeholders with safeguarding duties. Local authorities and organisations with responsibility for children and young people, including the Children's Commissioner for Wales and the National Independent Safeguarding Board (NISB), have consistently argued the current legislative framework is not robust enough to enable local authorities to identify children living within their areas, and be able to effectively undertake their statutory duties.

25. Whilst children who attend independent schools are not missing education, a notification of their registration at independent schools would assist local authorities to fulfil their education duties and make existing CME processes more robust.

26. The CME statutory guidance sets out how local authorities should undertake their duties and the mechanisms or networks that can be used. However, there are no formal or consistent mechanisms in place to support local authorities to apply the guidance, ensure consistency of approach, and enable the identification of all children.

27. Local authorities are under increased pressure to manage the increase in numbers of school de-registrations, identify all children, and determine suitability of education for all children living in their areas who are not in school. Numbers of EHE children have increased significantly since the development of these proposals, and in particular since the Covid-19 pandemic. Whilst local authorities have information relating to children who have been deregistered from school, the increased EHE cohort will include children who have never been to school, and children who have moved from another area or country. Unless the parent contacts the local authority voluntarily, these children remain unknown and are potentially CME.

28. If we maintain the status quo these concerns will not be addressed.

Option 2: Introduce regulations to facilitate a pilot of a CME database, with separate regulations requiring information from independent schools to support the database arrangements.

29. This option provides for two sets of regulations that aim to provide local authorities with a more complete education data set and consistent data sharing mechanisms. Regulations requiring local authorities to establish a CME list or database, and requiring local health boards to provide information to identify unknown children, would be introduced. Separate regulations that place a duty on proprietors of independent schools to inform local authorities about children on roll with them, would be implemented alongside. Arrangements would be piloted with some local authorities in the first instance.

Context

30. Local authorities have a duty to make arrangements to identify children who are not in receipt of a suitable education either at school or otherwise. This can include those children who are known to the local authority as well as those children who are not known. Local authorities have consistently argued they have difficulty in fulfilling this requirement as there is no duty on parents to 'register' their children with the local authority if they are educated at home. Information about children on roll at independent schools is also not currently provided to local authorities, resulting in larger gaps in data and difficulty determining how children who are not in maintained schools or EOTAS, are receiving their education.

21. To support the proposal under this option, two sets of separate regulations would be required. The information regulations require that information about pupils in independent schools is shared with local authorities. This information is needed to ensure that the CME arrangements are robust, and that children attending independent schools are removed from potential CME enquiries.

31. Whilst the database regulations cannot be used to compel a parent to register that their child is EHE, the view is that both sets of regulations combined would provide the local authority with a reasonably complete list of children not previously known to them (and therefore potentially CME), including children who are said to be EHE, but where the parent

has not notified the local authority that they are home-educating, and not provided information to demonstrate the child is receiving a suitable education.

32. This option does not remove a parent's choice to home-educate, but it does aim to provide a mechanism for local authorities to be aware of children who are currently not known to them, and be assured that they are not CME.

Costs

Welsh Government

33. There are no direct costs to the Welsh Government associated with this option other than opportunity costs relating to staff time i.e. time of the policy lead that would be spent on other areas of work/policy development.

Local authorities

34. Local authorities already have databases of children who they know are EHE, in alternative local authority provision, and information about pupils on maintained school rolls. Although the costs associated with this option should be minimal, these have not been defined. However, any additional costs would arise from staff time spent recording the information received from independent schools on the LA education database, before cross-referencing the education data with information from LHBs.

35. The procedures for issuing School Attendance Order (SAOs) or Education Supervision Orders remain unchanged¹², however, introduction of a CME database may result in more children being identified who are not receiving an education. Local authorities may be required to consider issuing more SAOs as a result of this.

36. As the regulations would be made to support a pilot of the arrangements, the cost implications will form part of the evaluation process. The pilot would be a means of gathering data on the impact on LAs, including capacity and cost implications. If the arrangements are implemented across Wales (via new regulations) following the pilot, a full assessment of the costs will be undertaken. The impact assessment will be informed by the evaluation report.

¹² Section 437 of the Education Act 1996 – School attendance orders.

LHBs / independent schools

37. Some LHBs and independent schools already have arrangements in place with local authorities and provide information they hold on school age children; however, this is not consistent across Wales. There would be a small additional cost of administration for LHB partners and independent schools if they do not currently have any data sharing mechanism in place. Given the information will only need to be provided on an annual basis and following engagement, it is thought that any increase in cost would be small. As with potential costs for local authorities, the impact on LHBs and independent schools will be fully considered as part of the pilot.
38. In relation to the burden on independent schools, the amount of information being shared will be very minimal (name, address and date of birth of the child) and proprietors have previously indicated that there are no costs associated. It is proposed that this aspect is evaluated as part of a pilot of the arrangements with a view to providing a standardised process for independent schools to submit the information.

Benefits

39. The benefits of education to both children and the broader society are clear. Education can break generational cycles of poverty by enabling children to gain the life skills and knowledge needed to cope with societal challenges. Education is strongly linked to concrete improvements in health and nutrition, improving children's very chances for survival. Education empowers children to be full and active participants in society, able to exercise their rights and engage in civil and political life. Education is also a powerful protection factor: children who are in school are less likely to come into conflict with the law and much less vulnerable to rampant forms of child exploitation¹³.
40. Children not receiving a suitable education are at significant risk of underachieving, being victims of harm, exploitation or radicalisation, and becoming NEET (not in education, employment or training) later in life. Option 2 will help local authorities identify children who may be CME. It provides local authorities with a mechanism to identify children not included on any education data set and therefore not known to them. The LA will use the information to undertake enquiries, ensure these children are in receipt of a suitable education, and reduce this risk.

¹³ <https://www.hrw.org/report/2016/06/09/education-deficit/failures-protect-and-fulfill-right-education-through-global>

41. Missing education is a welfare issue. Option 2 supports the Welsh Government's policy aim of protecting children's rights, and promotes child welfare and wellbeing. The regulations would help local authorities identify children not known to them allowing them to take action to ensure that those children are receiving a suitable education. This is compatible with the UNCRC, specifically Articles 28 and 29 – the right to an education. Local authorities have an additional safeguarding duty in respect of all children living in their areas. The current inability of local authorities to identify all children contravenes this duty.
42. Introducing a data sharing requirement on independent schools provides an additional benefit as it opens a channel of communication between local authorities and independent schools in their area. This reduces the risk of children falling under the radar if they have moved between the state and independent sectors, or between EHE and the independent school sector.
43. Testing the arrangements via a pilot in the first instance provides an opportunity to measure the outcomes and amend the regulations, if necessary, ahead of implementing across all local authorities. If arrangements are implemented across Wales following the pilot, the regulations would help strengthen current legislation under the Education Acts and Children Act 2004 and ensure consistency of LA approach across Wales.

Disbenefits

44. Option 2 does not meet the full ask of stakeholders meaning that further legislative measures may be required at a later stage. The regulations would not require parents or carers to register with their local authority if their child is not registered at school. Instead, they introduce a formal data sharing arrangement between local authorities and local health boards with a view to identifying children not currently included on the local authority education dataset. As there would not be a requirement on parents to notify the local authority if they were home-educating, this option would not help differentiate between CME and children who are EHE and but unknown to the local authority.
45. This option may not capture data on all children who are not in school as there may be children who are not registered with a GP and therefore not included in the health data.
46. The independent school sector is currently navigating changes to legislation covering VAT exemptions. Placing a new duty on them at this

time may be considered to be an unnecessary burden. This will be mitigated by engaging with the Welsh Independent Schools Council (WISC) and meeting with representatives from schools ahead of the pilot.

47. For the majority of children, the measures would not lead to improved educational outcomes as there are no proposed changes to delivery of EHE itself or restrictions on who can be educated at home. Further measures may be required to strengthen the policy following the pilot.
48. Home-educating groups continue to oppose any form of registration or system of identification. Whilst this option balances the policy requirements with the views of EHE groups, the option may still create discord between home educating families and local authorities and impact on their ability to undertake their duties. This disbenefit has been mitigated as far as possible as the proposals aim to identify children who are CME.
49. As there is currently no requirement on parents to notify their local authority if they are home-educating, the local authority may not know about all EHE children. If the LA cannot determine that an EHE child is in receipt of a suitable education, or a parent of an EHE child fails to make themselves known to the LA, the child is potentially CME. The child would then be included on the CME database until the LA is assured that the education provided by the parent is suitable and efficient. Primary legislation would be required to address this concern, enable local authorities to identify all EHE children, and determine that they are not CME.
50. Strengthened legislation to address safeguarding and welfare concerns about children not known to local authorities has been recommended by the Children's Commissioner for Wales and the National Independent Safeguarding Board. Primary legislation that would place a duty on parents to register with their LA if they are home-educating would establish a clear line between EHE and CME, and support local authorities to identify children they are not aware of. This may be considered in the future, pending wider developments.

Competition Assessment

51. The making of Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations is not expected to impact on the competitiveness of businesses, charities or the voluntary sector.

Post-implementation Review

52. The arrangements will be fully tested via the pilot approach and an independent evaluation will be undertaken alongside its implementation. The evaluation will assess the impact of the regulations on local authorities, local health board partners and independent schools and any associated costs/time factors. It will assess whether the database arrangements are effective in identifying children who may be missing education and whether amendments to the regulations are required ahead of arrangements being implemented across all local authorities in Wales.