

Briefing: Welsh government consultation on “children missing education” databases and regulations for Local Authorities and Local Health Boards

The proposal

The stated aim of the Welsh government consultation¹ is to create a mechanism for Local Authorities (LAs) in education to identify children they do not know about. The proposed method is by extracting and using health data linked with data from education (state and independent settings), to search for those who are “*potentially missing education*” with “*a view to safeguarding and promoting the welfare of children*”.

The Welsh government proposal will mandate Local Health Boards (LHBs) and general medical services contractors to be used as data lakes as the initial sources of children’s records for each local council’s separate data matching exercise. The example given is of GPs only (“*for example, a GP surgery*”) however the GMS contract² reach is far wider extending to contraceptive services, childhood vaccines and immunisations services, child health surveillance services, dentists, midwifery and nursing, mental health services, opticians, podiatrists, pharmacist or independent prescribers. The full extent of these services is unclear as it is not explicitly explained.

First, LHBs and GMS contractors (NHS data record holders) will be mandated to share identifying data on every child in Wales between the ages of 5-16 with local councils. New regulations will also require independent schools to share information about children on-roll, with the LA where the child was usually resident. From this the councils then create “*lists*” in order to perform a data matching exercise from multiple educational sources including independent and state schools and further existing data on records held by LAs. The data of individual children that is not matched will enable each Local Authority to create their own database of children known to health services but not recorded in educational records. To each of these subset databases, further personal data will be collected and added to by each LA about all of the child’s “connected” adults with parental, caring, or any educational role (with even minimal contact time, over any time period falls within the new requirement).

The introduction of these proposals would require a commencement order and the enactment of s29 of the Children’s Act 2004³ according to the consultation, which would open the door to unprecedented and almost unlimited powers for whatever government minister were in post to mandate sharing of almost any data from whatever healthcare source or person they choose, without limitation or safeguards, and seemingly for whatever purpose the minister in post should decide beyond the currently stated use.⁴

Each Local Authority (there are 22 at the time of writing) will maintain its own database. Given that there are only seven local health boards⁵ but 22 LAs in Wales, the mechanism for ensuring that each LA only receives data relevant to those children in its area is unclear.

¹ Archived copy February 2024

<https://web.archive.org/web/20240222170551/https://www.gov.wales/children-missing-education-database-html>

² https://assets.publishing.service.gov.uk/media/5a7ac3beed915d670dd7e6a4/Standard_General_Medical_Services_Model_Contract.pdf

³ <https://www.legislation.gov.uk/ukpga/2004/31/section/29>

⁴ See <https://www.legislation.gov.uk/ukpga/2004/31/section/29> (4f-h)

⁵ Welsh health boards <https://www.gov.wales/nhs-wales-health-boards-and-trusts>

The call to action

We object to the proposals and need to raise awareness of the consultation to others who will be affected. This includes the vast number of people whose personal data will be retained without consent in a child's records as somehow connected to a child's education.

Closing April 25th 2024 <https://www.gov.wales/children-missing-education-database>

The stated aims and expected impact

Today LAs have their own processes for identifying children who are CME. The new proposals are justified by the claim that there "*might be*" further children who are not known to the LA today, whose educational provision does not match a Local Authority opinion of suitable but who *are* already known to the NHS.

According to the 2021 Census,⁶ 16.5% of the population (513,800) in Wales were aged under 15 years (the interval 5-16 may be estimated to be within a similar range as 0-15). The proposals would mean first handing over data from confidential health records to councils on these ca. half million children in Wales, the overwhelming majority of whom (according to the consultation's own description) are known to Local Authorities and also in education. This creates "lists" and then from those, new "databases", not on the basis that they ARE at any risk of not being in receipt of education, but that they merely "*might be*" not in receipt of suitable education.

"Most children will be attending school or EOTAS provision or EHE and known to be in receipt of a suitable education. Only the names of children who are not known to the LA, or known to the LA but they have been unable to determine whether the education being provided is suitable, will be included on the database."

There is no *necessity* to process the personal data of the overwhelming majority of children for this purpose at all.

The Welsh government's **children's rights consultation impact assessment (CRiA s3)**⁸ to accompany the consultation notes the risk that once it is known that health data would be used for non-health purposes, some families may choose not to present children to healthcare services, and the proposal makes no mitigations for this harm caused by the policy as outlined, to individuals or public health.

"One identified potential negative effect of the proposals is the potential for families to fail to register with a GP if they felt strongly that they didn't want their details shared with local authorities".

This alone should end the plans, making them too high risk for the very children suggested could be identified in this way. Not only failing in its intended aim but causing more harm.

⁶ ONS (2021) Census 2021 rounded population and household estimates for local authorities in Wales, by sex and five-year age group <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/populationandhouseholdestimateswales/census2021>

⁷ Consultation section "How will the database operate"

<https://web.archive.org/web/20240222170551/https://www.gov.wales/children-missing-education-database-html>

⁸ Children's Rights Impact Assessment (CRiA) Archived February 2024

<https://web.archive.org/web/20240225120655/https://www.gov.wales/childrens-rights-impact-assessment-draft-children-act-2004-children-missing-education-database>

What personal data is involved from whom

These databases would require extensive amounts of data about children, families and unrelated adults connected to their education⁹ –

First, the initial “*lists*” (our italics indicating quoted wording as used in the consultation), will be created by extracting identifying data from health sources of every child known to services in Wales to include the names and contact details of the child, the child’s address (or last known address), postcode, date of birth, the child’s gender or if the child’s gender has not been specified a statement to that effect.

Each council will then perform a cross-check of these lists containing every child in state but not private health registers against children in education, including state and private schools. “*Independent schools will share the same basic information with the LA about children on-roll at their school*”.

This leaves each council with a subgroup of children labelled as, “*potentially missing education*” to be placed onto the relevant Local Authority’s new “*database*”.¹⁰

To these databases, councils will add the name and address of every person providing all or part of the education which is not explicitly described but could be inferred to include Sunday school teachers and religious groups, art, music, drama and sports activity providers, forest schools and youth groups, Scouts and Guiding groups, and fellow home educating parents when take part in shared learning times or home ed clubs and groups across Wales for example involved in Home Education. The sources or methods of obtaining these data are not specified in the consultation.

The outcome

The creation of such databases would then require a significant amount of data that councils would be mandated to elicit, including (according to the regulation as drafted) :

1. Name and contact details of every adult who has either parental responsibility or any care role in the child’s life. This will result in databases of families rather than only children, with the child impact assessment referencing the outcome of being aware of “*families that they may not have previously been aware of*”.
2. The name and address of every person providing all or part of the education, (in the case of home education this would include a very wide range of educationally enriching activities that each child may participate in) ;
3. Subjective opinions on any additional learning needs the child MAY have and the provisions required, without clarity on whose opinions or decisions these would be.
4. “It is intended that the data disclosure will take place once a year and will provide as accurate as possible data at a particular point in time.”

⁹<https://www.gov.wales/sites/default/files/consultations/2024-01/children-act-2004-information-database-wales-regulations.pdf> (page 8)

¹⁰ This appears not to be as clear cut as meeting the terms set out as, “not known to be in receipt of suitable education otherwise than at a school (as set out in s436a of the Education Act)” but will conflate children who might be missing education with those who are in fact in education but not yet ruled out in the opinion of the LA. It also makes an assumption that child enrolled and on a school roll are in receipt of suitable education and would not include children with low attendance or out of school.

Additional matters for affected groups

For independent education settings

Private schools and education settings will be required to communicate with all of the authorities “*where the child was usually resident*” to share the personal details of every pupil on-roll.¹¹ This will have implications for children not usually resident in Wales, from day pupils to boarders, as well as for their healthcare professionals. Potential further complications may be foreseeable if children in their care for education are not registered with any of the Local Health Boards (LHBs) and general medical services contractors in scope. This, one must infer, would trigger a ‘not matched’ result in the process but if and how that would be acted on or what significance it may be assigned is unclear.

For home educators

While the proposals are framed as creating databases only of Children Missing Education the outcome in reality is that Local Authorities are going to create registers of children and their families in Elective Home Education (EHE) in order to compare “*lists*” and create the “*databases*” of CME. Since this comparison is an annual duty it is inevitable that Local Authorities will be encouraged to retain these data that they did not previously. If this is not the intention of the proposals then the obligation to delete such EHE data immediately after lists’ comparison, should be on the face of the regulation.

For marginalised communities

These proposals specifically single out, “*Gypsy, Roma and Traveller (GRT) learners whose families have made the decision to home educate*”, and the impact assessment explains at length what processes should be followed to record children as CME if they are working (but does not explain that these are existing processes and therefore this paragraph in the impact assessment does not in fact describe *impact* of the proposals). Under the Equality Act 2010, public bodies cannot discriminate against people on grounds of race, which in this case applies to the explicit description of families and children of the GRT community.

For child protection services

There is no impact assessment on current service provision. There is a risk that additional administrative workload across already stretched local councils staffing will worsen current standards¹² without bringing additional positive outcomes. There is a poor history of child safeguarding where the state takes over parental responsibility. From abuse in children’s homes¹³ to more recent child deaths¹⁴ local authority services have failed to support *known* children-at-risk. Assessment must be made of how resources invested in these proposals to identify *unknown* children would affect existing workload, responsibilities and resources of council staff, before adding the unnecessary processing of additional children who “*might be*” at risk of missing education, are not at-risk and for whom there are no welfare concerns.

¹¹ Consultation <https://www.gov.wales/children-missing-education-database-html>

¹² Wales Online (2021) Wales among the worst in the world for children in state care <https://www.walesonline.co.uk/news/wales-news/wales-among-worst-world-children-20461139>

¹³ The Guardian (2013) North Wales child abuse: more than 140 people say they were victims <https://www.theguardian.com/uk/2013/apr/29/north-wales-child-abuse-victims>

¹⁴ <https://www.theguardian.com/society/2022/oct/05/council-where-logan-mwangi-was-murdered-worryingly-dependent-on-a-gency-care>

Questions and challenges

1. **Risk of creating harm to children:** What risk assessment has been done for children who *are* at a safeguarding risk but not in school and whose families may therefore decide to no longer present to healthcare services, because this would flag them to LAs. *“One identified potential negative effect of the proposals is the potential for families to fail to register with a GP if they felt strongly that they didn’t want their details shared with local authorities.”* Although the children’s rights consultation impact assessment (CRIA s3)¹⁵ notes this risk created by the proposal, the proposal makes no assessment of the level of this harm or mitigations.
2. The Impact Assessment suggests a live pilot will aim to assess the level of harm. *“The potential risk is further mitigated as proposals will be piloted with a smaller number of local authorities, ahead of being implemented more widely.”* Any new harm must be assessed *before* being ‘piloted’ in a real-world scenario. Actual lives are not a test environment and identifying who does *not* present, is near impossible.
3. What risk assessment has been done for children who are at a safeguarding risk from one parent and whose personal data must now be linked together with the details of both parents, since the proposals mandate, *“name, address, postcode, telephone number and email address of all parents of the child?”*
4. What risk assessment has been done for children who are *not* a safeguarding risk and not in state education, and for whom the new process will create a chilling effect when presenting to healthcare services, if they believe any personal data about them may be shared with LAs, but without their sight of it, or their consent?
5. There is a conflation of children at risk of missing education and children ‘at-risk’ ie in need of child protection in the consultation. It states that, *“If the LA does not know about a child it is responsible for, it is unable to undertake its duties in relation to safeguarding and welfare, and cannot be certain that the child is not at risk of harm.”* What duties these are and under what powers are not expressly stated. However, the suggestion is that LAs should take on increased duties, *“in relation to safeguarding and welfare”*. What will the impact be on existing service provision?
6. **Discrimination:** Where is the risk assessment carried out for GRT community children of the targeted aims set out in the Impact Assessment, but described without assessment of the outcomes?
7. **Data accuracy and implications for timely interventions:** The Consultation states, *“this will not be a central all-Wales database and it will not be live.”* Will the databases be accurate beyond the point of collection for 364 days a year?
8. **Data governance:** Since there are fewer LHB areas (7) than Local Authorities (22) LHBs will need to identify and sort which children are “usually resident” in each Local Authority to send them only the relevant children. Is there a mechanism to do this or will it require additional workload and/or unlawful and inappropriate excessive data sharing?

¹⁵Children’s Rights Impact Assessment (CRIA) Archived February 2024
<https://web.archive.org/web/20240225120655/https://www.gov.wales/childrens-rights-impact-assessment-draft-children-act-2004-children-missing-education-database>

9. Collecting the name and address of every person providing all or part of the education will mean an enormous data collection exercise. There is no detail on how the data will be acquired from providers e.g. does this mean a mandated duty on home educators to provide the name and address of every person providing any contribution to their child's education?
10. There is no information in the consultation if and how parents or any of the range of other adults whose data would be held on such databases would be informed what has been collected, retained, or passed around. There is no mention of if and how they will be able to see the content of what is held in relation to them on databases, including subjective opinions. There is no process for accuracy, there are no routes for correction or challenge of opinions. This process further disempowers children and families while creating more powers for Local Authorities.
11. **Workload and costs:** This process would create new workload for healthcare professionals and the independent education sectors, as well as the Local Authorities to process the data of every child 5-16. There is no information available about data cleansing, formatting or interoperability requirements. What is the time and cost assessment ascribed to each body or sector? Who will pay for it?
12. **Horizon scanning:** With forward looking plans in health¹⁶ and education for national records services, what safeguards are in place for new risks from automated data extraction, the use of AI and data linkage that exceeds the expectations of those responding to the consultation with the expectations of today's infrastructure and that "each" LA would run its own databases?

The primary objections to the proposals

Driving families away from public services and increasing risk to children

The outcome of these proposals will be counter to their stated aim, likely to make any vulnerable children less visible and less able to access healthcare, external care input and educationally enriching experiences. This known effect is foreseen by the Welsh Government. The then Education Minister Kirsty Williams, on introducing these proposals in 2018, said of putting a mandate onto parents instead of local authorities:

"I suspect this element of compulsion could have the unintended consequence—the very real unintended consequence—of driving those parents further away from engagement with statutory services".¹⁷

There is no mitigation of the risk (of children being removed from the health service) offered.

Data confidentiality and damage to public trust

Non-consensual data-sharing from health care sources is unethical and damaging, affecting the trust-based clinician-patient relationship and creating barriers to accessing healthcare.

¹⁶ Welsh Government (2023) Digital and data strategy for health and social care in Wales
<https://www.gov.wales/sites/default/files/pdf-versions/2024/1/2/1705403312/digital-and-data-strategy-health-and-social-care-wales.pdf>

¹⁷ Plenary 30/01/2018 Welsh Parliament (para 395)
https://record.assembly.wales/Plenary/4901?fbclid=IwAR0_Kzg5y2WBABvoIhMdBwwwvRjFWpXSy-5AwgGVP03Kkhh8xp8MXJnZvhQU_aem_AYj-K0yJSpWhCsTt_-5mW7lyRC-pqXELRBH1mexyOtMJ693Ctn6Cf86mvL6u5XYxhsKhVf2HyvU0tLOxNJJ69se#A10000068

As explained online by HE Byte¹⁸ in its article, **Why hasn't the Welsh Government Listened to the General Medical Council?** The GMC objected strongly in 2020 to similar proposals¹⁹, stating that non-clinical health records should be treated with the same confidentiality as clinical records. They also predicted harm to families and public health:

“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.”

A 2024 report, *Confidentiality and Respect: Impact of Attitudes and Conduct of Healthcare Professionals towards Home Educating Families*, also demonstrated the harmful impact of non-consensual data sharing from healthcare services for home educators.²⁰

There are no safeguards on how people will be informed that their names and personal details are being extracted from health services, or clear limitations on where it may be sent or retained after collection.

There are clear precedents to demonstrate that such data-sharing is counterproductive and unsafe, and would render clinicians less able to exercise their natural safeguarding functions such as:

- ContactPoint²¹ scrapped in 2010;²²
- NHS data sources on asylum seekers in 2018 as part of screening for illegal activity;
- The Royal College of Obstetricians and Gynaecologists (RCOG) 2024 guidance on the confidentiality of women and involvement of the police and external agencies following abortion, pregnancy loss and unexpected delivery.²³

About ContactPoint, Children's Minister Tim Loughton in 2010 said, *“We need a better child protection system in this country, but at the end of the day it's not a computer system that will save vulnerable children. It's the performance of the professionals at the sharp end, who need to be properly trained and resourced.”*²⁴

This is an ineffective, counterproductive and misdirected use of funding, that is unsafe not only by creating barriers to access of healthcare, as pointed out by experts in NHS data medConfidential²⁵, but also in terms of the risk of data breaches, with data being stored on council lists and databases rather than within tightly governed NHS data models.

Legislative overreach

In the Welsh Government's attempts to take *“a real opportunity to test the fullest extent of existing legislation”*, boundaries are overstepped rather than stretched in the depictions of

¹⁸ HE Byte (April 2024) <https://he-byte.uk/wales/why-hasnt-the-welsh-government-listened-to-the-general-medical-council/>

¹⁹ GMC 2020 consultation response: The Draft Children Act 2004 Database (Wales) Regulations 2020 and the Draft Education (Information about Children in Independent Schools) Wales) Regulations 2020 Consultation <https://www.gmc-uk.org/-/media/documents/gmc-response-to-welsh-government-consultation---local-health-board-disclosures-to-local-aut-84392705.pdf>

²⁰ McKee, R.Dr. (2024) Confidentiality and Respect: Impact of Attitudes and Conduct of Healthcare Professionals towards Home Educating Families

<https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf>

²¹ Deloitte (2008) ContactPoint data security review final report

https://web.archive.org/web/20231221091932/https://assets.publishing.service.gov.uk/media/5a74881ce5274a7f99028f07/deloitte_20contactpoint_20dsr_20report.pdf

²² <https://researchbriefings.files.parliament.uk/documents/SN05171/SN05171.pdf>

²³ <https://www.rcog.org.uk/news/rcog-issues-guidance-for-healthcare-professionals-on-involving-the-police-following-abortion-n-and-pregnancy-loss/> (January 2024) RCOG

²⁴ <https://www.bbc.co.uk/news/education-10887082>

²⁵ medConfidential briefing <https://medconfidential.org/wp-content/uploads/2024/03/medconfidential-cme-wales.pdf>

legislation and legal duties of authorities.

For example, s175 of Education Act 2002 is used to depict a duty of LAs of safeguarding and well-being as if it applies to every child in the country. However, s175 refers only to duties of local authorities in relation to institutions with governing bodies, where parents have chosen to delegate responsibilities to those bodies. Even in those situations, s175 does not grant authority for authorities to take over such responsibilities but rather have “a view” to these when exercising educational functions in relation to those institutions.

The meaning of the Education Act 1996 is also represented differently than the text of the legislation, changing the meaning of the term “*missing education*” from “*are not*” in the legislation to “*may not be*”. The lawful duties of authorities are therefore misrepresented and misquoted (intentionally or otherwise) but may appear to seek to justify attempts to increase data-sharing powers, increasing the extent of data required, and breadth of persons from whom personal confidential data on others and themselves can be mandated.

The wide range of in-depth data required and the open-ended and potential for far greater range of data to be mandated by enactment of s29 (Children’s Act 2004) make this a starting proposal with in-built intention for scope creep. This is a poor basis for trust.

The consultation process

In addition to the substantive issues, the process of the consultation itself is flawed. Although it opened on January 31st 2024, no information about the consultation was sent proactively, either by local authorities or the Welsh Government, to the home educators for whom local authorities already hold data on record until home educators heard about the consultation by other means and asked.

A child-friendly version has not been published or made widely available, despite references to this, including in statements made to the Senedd by Minister for Education, Jeremy Miles, on March 13, 2024, who said he wanted to, “*engage the widest audience possible. It is important that we hear all the voices, and I’d encourage people to contribute to the consultation.*”²⁶

The consultation document states that each LA will ensure that information relating to children moving between local authority areas, is shared with the relevant LA, however their information sheet for young people contradicts this, by stating that such information will not be shared between LAs.²⁷

A formal complaint documenting a range of issues with the consultation process in relation to children and young people was submitted by Home Ed Cymru to the new Cabinet Secretary for Education on 4th of April 2024.

Defend Digital Me
Home Ed Cymru

April 15, 2024

²⁶ Minister for Education Jeremy Miles, March 13, 2024, Senedd https://www.theyworkforyou.com/senedd/?id=2024-03-13.3.576196&s=%E2%80%9CHome%20education%E2%80%9D&fbclid=IwAR1zfjZtaYTUaa6RTU7UfV1MNqu6-GUfAgVxVHLKQLFAhSjeSPMpv8ROsdk_aem_AUfU3URGzsZ1qY0yFNt2uvAYt0M6FOP7XcYykd6XjCYB6CpfXgtGaNY7Rb0DvO3622shfOzIRNI0tUsEbMLTVHZj#g3.576221

²⁷ Welsh government “factsheet” (not publicly published). Copy received after request by HomeEdCymru retained by Families First <https://familiesfirst.wales/wp-content/uploads/2024/04/Education-Missing-Database.pdf> (page 5)