

# **Data Protection Impact Assessment (DPIA) 2023/24:**

## **The Draft *Children Act 2004 Children Missing Education Database (Wales) Regulations 2025***

### **Step one: Identify the need for a DPIA**

#### **1. Introduction**

- 1.1 This draft DPIA has been developed to consider the implications of proposals on the introduction of Regulations that would (a) require Local Authorities (LAs) to develop and maintain a database of statutory school aged children who may be missing education, i.e. a 'CME database', and (b) require local health boards (LHBs) to share basic information about children registered with them, with the local authority where the child is usually resident, for the purpose of establishing the database. The Information Commissioner's Office (ICO) and Article 36(4) (of the UK GDPR) assessment confirms that as the proposals involve combining, comparing / matching personal data obtained from multiple sources it is deemed appropriate that a DPIA is developed. The Article 36(4) form was submitted to the ICO on 1 December 2023 and the Welsh Government committed to providing further detail on the proposal (via a DPIA) ahead of the closure of the A36(4) process.
- 1.2 This draft DPIA considers compliance risks, but also broader risks to the rights and freedoms of individuals. It assesses the level of risk - considering both the likelihood and the severity of any impact on individuals - and helps to minimise risks and assess whether or not remaining risks are justified, necessary and proportionate. The DPIA is a vital part of data protection by design. It aims to build in data protection compliance and influence how the proposal is developed and implemented.
- 1.3 The DPIA has been a working document, developed alongside co-construction of the policy with stakeholders, and evidence from the previous consultation on the Children Act 2004 Information Database (Wales) Regulations undertaken in 2019, and the revised Children Act 2004 Children Missing Education Database (Wales) Regulations 2025.
- 1.4 The consultation on the regulations was undertaken from 31 January 2024 – 25 April 2024, with evaluation of the consultation responses undertaken in June 2024.

## 2. Background to proposals

- 2.1 The proposals to develop local authority databases of children who may be missing education and establish clear data sharing arrangements between relevant public bodies, have been in discussion and early development since the tragic death of Dylan Seabridge in Pembrokeshire in 2011. Dylan was educated at home and had not been seen by any professional for seven years, despite being registered with a GP. The then Children's Commissioner for Wales stated that the Welsh Government needed to ensure the welfare and safeguarding of all children, and establish a compulsory register of electively home educated ("EHE") children to prevent them from falling under the radar and potentially coming to harm. Whilst there is no evidence that being home educated in itself is 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 ([statutory-guidance-help-prevent-children-young-people-missing-education.pdf](https://gov.wales/statutory-guidance-help-prevent-children-young-people-missing-education.pdf) ([gov.wales](https://gov.wales))).
- 2.2 Even though Dylan Seabridge was known to authorities, attempts to see him were refused by his parents. In cases like his, the combination of the [statutory EHE guidance](#) and CME database proposals would strengthen the local authority's position; the EHE guidance emphasises the need to 'see the child' (albeit this is not mandatory) and the database requirements would ensure that a child in similar circumstances would be classed as CME (as the LA would be unable to meet their section 175 duty of ensuring that the functions conferred on them in their capacity as a local authority are exercised with a view to safeguarding and promoting the welfare of children) rather than EHE and 'not seen'.
- 2.3 Although cases like Dylan Seabridge are rare, the number of children known to be EHE has increased significantly since 2019. Pre-pandemic the number EHE children was 2,517 (2018/19). The number rose to 4,022 in the academic year 2020/21 and to 6,156 in 2023/24.
- 2.4 With the rise in numbers of learners who are now EHE, there is an automatic increase in children who are potentially CME, with LAs reporting that they do not always know about children living within their areas and that it is difficult to determine accurate CME numbers.

- 2.5 A thorough consultation on a “compulsory system of registration and monitoring for home educated children and young people” was undertaken in 2012 but was subsequently [put on hold by the Welsh Government administration at the time](#).
- 2.6 The Child Practice Review into Dylan’s death that was published in 2016 includes several references to Dylan being ‘invisible’ to authorities. In the Senedd in 2016, the Welsh Ministers debated the recommendations set out in the Children’s Commissioner for Wales’ annual report. One of the recommendations was: *“strengthening the registration requirements of elective home education”*.

### **3. Arrangements across the UK**

- 3.1 The issue of children missing from the system and/or not known to authorities has also been raised in England by the Children’s Commissioner for England. The House of Commons Education Select Committee has drawn links between EHE and CME and in 2021 published its [report](#) into strengthening home education. The report recommends that a statutory register to identify children outside of school is absolutely necessary and should be taken forward. In February 2022 the UK government announced plans to introduce a statutory register of children ‘not in school’; they reaffirmed this commitment in January 2024. This is being brought about through proposals in the Children’s Wellbeing and Schools Bill, introduced to the UK Parliament in December 2024, which includes plans to make it a requirement for parents to register with their local authority to enable each local authority to develop a ‘children not in school register’. The Department for Education’s (DfE’s) definition of ‘children not in school includes EHE children (known and not known to the LA), all children “*educated other than at school*” (or “EOTAS” - including EOTAS provided by the LA) and CME.
- 3.2 There is precedent for regulations that require a database of data relating to children. The Children Act 2004 Information Database (England) Regulations 2007 specified the development of a national database of information about children. The database was known as “ContactPoint” and was launched in 2009 as an online directory of basic information about all children in England that could be accessed by frontline professionals (health, social care, education and youth justice), to co-ordinate support for children. The regulations were repealed following the general election in 2010 due to overall concerns by the then UK coalition government that it was not proportionate to hold information about all children for the purposes of providing support to some.
- 3.3 In 2014 the Scottish Government announced plans to introduce its ‘named person scheme’, via the main provisions within the Children and Young People (Scotland) Act 2014. The named person scheme proposed that all children would be assigned a ‘named person’ as a single point of contact to promote and safeguard their wellbeing. It proposed to help parents access services and to identify those children

in need of protection. In 2016, the Supreme Court ruled that the scheme risked breaching Article 8 of the European Convention on Human Rights (the right to a private and family life), although they noted the aims were legitimate. The Scottish Government was directed to amend proposals to ensure they did not breach the ECHR. In 2019 it decided to repeal parts of the original Act that included the named person requirements.

#### **4. Previous consultation and draft Regulations**

- 4.1 LAs in Wales have always been clear that they require more support and powers to be able to undertake their statutory education functions under the Education Acts – in particular those relating to safeguarding and to EHE (these duties are contained within sections 175 of the Education Act 2002 and section 436A of the Education Act 1996, respectively). The initial proposals were developed following co-construction with stakeholders, including stakeholder working groups and development workshops.
- 4.2 The Welsh Government undertook a [12-week consultation](#) on the Draft Children Act 2004 Database (Wales) Regulations in 2019 (“the 2020 Regulations”) and on the Draft Information (Children in Independent Schools) Regulations 2020 (“the Information Regulations”). Both sets of draft Regulations supported the same proposal and would allow LAs to cross reference information from LHBs and independent schools to correctly identify children who may be CME. The Information Regulations are not within scope of this consultation, or DPIA.
- 4.3 The first of the two main provisions within the 2020 draft regulations was a requirement on LAs to establish a database of all children living in the local authority area. The second was a requirement on local health boards to provide information about children to the relevant local authority on an annual basis. The purpose of the data sharing was so that Local Authorities could undertake their Section 436A duty under the Education Act 1996, which is to undertake arrangements to ensure that all children are in receipt of a suitable education, either at school or otherwise. Under the 2020 draft regulations, local health boards (LHBs) would be required to submit the following information to the local authority, all of which would be included within the database:
- The child’s name (including any former name).
  - The child’s address or whereabouts— (a) the child’s current address; (b) if at any time there is no known current address for the child, the child’s last known address; (c) a statement that there is no known address for the child, or (d) where the child has ceased to be ordinarily resident in the local authority a statement that the local authority— (i) has information that the person intends to return to the local authority area within 3 years from the date on which the authority considers that the person ceased to ordinarily

resident; (ii) has information that the person does not intend to return to the local authority area within a period of 3 years from the date on which the local authority considers that the person ceased to be ordinarily resident; or (iii) does not have any information as to whether the person does or does not intend to return to the local authority area.

- The child's gender or if the person's gender has not been specified a statement about the effect.
- The child's date of birth.
- Such number as is used to identify the child in the database.
- The name and contact details of any person with parental responsibility for the child or who has care of the child at any time.
- Where the child is attending an educational institution the name and contact details of the institution, the date on which the child started attending the institution and (where applicable) the date of which the child ceased attending.
- Where the child is receiving education otherwise than at an educational institution, the name and contact details of a person or body providing such education, the date in which such education started and (where applicable) the date on which attended.
- Where the child has died the date of the child's death.

4.4 The consultation in 2012 received 550 responses from Local Authorities, EHE families and organisations with responsibility for education and with supporting children and young people. Most home educating families and agencies that support EHE opposed the legislative proposals in both the 2012 and 2019 consultations. However, Local Authorities and organisations with responsibility for children and young people were in favour. Independent schools were also in favour of the proposals as set out under the Information Regulations and did not highlight any issues. A summary of the responses from the 2019 consultation is included on the Welsh Government website - [Local authority education databases | GOV.WALES](#)

## **5. Policy scoping for revised proposals**

5.1 The Welsh Government considered all consultation responses and reviewed the policy proposals. Specifically, the Welsh Government gave further consideration to the rationale, legality and proportionality of the regulations, as these were the key concerns that were raised in some of the consultation responses.

5.2 In February 2021 the Children's Commissioner for Wales published a report in which she concluded that the Welsh Government has failed in its duty to protect the rights of children who are home educated. The Commissioner stated: "There has also been, in our view, a lack of clarity of those policy aims. This is because the policy work has not always explicitly linked back to the Dylan Seabridge child practice review recommendations, which recommended that all elective home educated children should be seen and spoken to and their wishes recorded on an annual basis."

- 5.3 In response to the consultation, and the Children's Commissioner for Wales' report, the Welsh Government worked with Local Authorities to develop new proposals in relation to EHE. New [elective home education statutory guidance](#) was published in May 2023, alongside a [parental handbook](#) in June 2023. The guidance does not change the law but clarifies it in relation to EHE and has clear messaging for Local Authorities and parents around the importance of 'seeing the child' and family engagement with the local authority. Although meetings with local authorities are not mandatory, the guidance clarifies that the local authority *must* be able to determine that the child is in receipt of a suitable education and recommends that the local authority sees the child to ensure this is taking place. The Welsh Government has also provided Local Authorities with additional funding for elective home education, which is used to develop a 'wider package of support' for EHE children and appoint additional local authority officers to enhance existing capacity and help embed the new guidance.
- 5.4 There is a requirement on LAs under section 25 of the Children Act 2004 ("the 2004 Act") to make arrangements to promote cooperation between relevant partners and any person or body with responsibility for children in their area. The Children Act 2004 (Children Missing Education Database) Wales Regulations 2025 will require each local authority to establish and populate a database of all compulsory school age children in their area who are potentially missing education, including where the local authority has not been able to establish that the child is in receipt of a suitable education. As with the previous proposals, health data will be used to help LAs identify children they do not know about, and to ensure they are in receipt of a suitable education.

## **Step two: Describe the information flows**

**The Welsh Government is not the data controller; it will not access the data or be included in the data process. This section has been included for completeness.**

### **6. Information sharing with partner agencies**

- 6.1 Local Authorities should already have information sharing protocols (ISPs) in place which clarify the circumstances under which information can and should be shared between agencies that support children. However, the absence of specific information sharing agreements or consent does not mean that information cannot be shared between agencies where a child's well-being is at risk. It is still appropriate to share personal information without breaching the DPA 2018 provided that it is necessary to do so to carry out statutory functions.
- 6.2 All 22 Local Authorities have signed the [Wales Accord on the Sharing of Personal Information \(WASPI\)](#). WASPI provides templates of data sharing agreements such as ISPs and Data Disclosure Agreements (DDAs) for LAs to use.
- 6.3 In order to ensure that all children are receiving a suitable education, it is vital that Local Authorities engage with other Local Authorities across England and

Wales. In addition to information sharing in Wales - as would be required by the Regulations - Welsh Local Authorities are already expected to develop ISPs with English Local Authorities to ensure children who move across borders are not at risk of becoming children missing education. This is set out within the statutory CME guidance.

## **7. Data held, duration of data retention**

7.1 In relation to only a subset of the information that is transferred to LAs being used or required to meet the policy objective, LHBs do not hold data relating to a child's education, nor do they have a mechanism for identifying which children are not in receipt of an education. It is therefore not possible to place a requirement on health professionals to only transfer information about children who are CME. Additionally, it is not for LHBs to make judgements or take decisions about the suitability of child's education as this duty (436A of the Education Act 2002) is on LAs.

7.2 LAs know about most children and already have access to information about children in school, EOTAS or EHE (provided the parent has notified the LA that they are home educating their child). The transfer of information about all children is necessary due to a) the inability of LHBs to make a judgement about suitability of education, b) to reduce the risk that children are not missed, and c) for LAs to effectively compare data sets and identify children who are not CME but have moved to another LA area. Basic information relating to all children of compulsory school age will be transferred to the LA, and the LA can then undertake the comparison exercise.

7.3 Only information from local health boards (acting in their capacity as a provider or commissioner of primary care services) and GPs in Wales will be transferred. This means that information about children who are resident in Wales but are registered with a GP in England will not be captured by the Regulations. However, it is worth noting that not all GP surgeries accept out of area patients – this is down to policy and capacity of individual GP surgeries. Additionally, other GP surgeries only accept temporary registrations for out of area patients.

7.4 The number of data subjects (children) within the data transfer will be limited to the actual numbers of children ordinarily resident in that local authority's area as is available to the local health board. The data controllers for the information will be general medical contractors (GPs) and local health boards. Whilst the information required is GP patient registration information, this information is also already held by local health boards. This information will be submitted by the local health board to the relevant local authority (the local authority where the child is usually resident). There is no specific action for the GP to take and although the obligation to disclose is also placed on GPs,



in reality it will be the LHB who will disclose the information to the LA. References in this paper to the LHB should be read in that context.

7.5 The regulations specify the volume of data for each local authority, which will be limited (in line with the data minimisation principle), to that relating to children who are potentially missing education; that is, they are not on roll at a maintained school, independent school, on roll at EOTAS provision or known to be home educated and deemed (by the local authority) to not be in receipt of a suitable education. The information on CME children will be basic, non-clinical information. Officials have discussed the requirements with health officials, and consulted with NHS Shared Service Partnerships on the practicality/availability of this data and the feasibility of providing each data set securely to the relevant LA. NHS Shared Services Partnerships manages data for the local health boards and is therefore the data processor. They have confirmed that the information as stated within the draft regulations is available to them and can be transferred, split by local authority area.

7.6 The draft regulations require each LHB to disclose:

- the child's name (including any former name)
- as respect the child's address or whereabouts—
  - the child's current address and postcode.
  - if at any time there is no known current address for the child, the child's last known address; or
  - a statement that there is no known address for the child.
  - the child's date of birth.

7.7 The Regulations specify that only information relating to children who are potentially CME, i.e. are not in maintained school, EOTAS, or EHE where the local authority has deemed the education to be unsuitable, will be held on the CME database. The information on children on roll at a school, EOTAS and EHE (determined to be in receipt of a suitable education by the local authority) is already held by the local authority and will only be used to cross-reference the information against the information provided by local health boards. If information about children in the health data set can be matched with education data, the name will be removed from the list and will not be included in the database. The geographical extent of the processing will extend to all children of compulsory school age who are usually resident in a local authority area in Wales.

7.8 The Regulations specify ([under regulations 6-10](#)) all circumstances whereby a child's name should be removed from the database. In all cases, the child's name will be removed from the database once the LA has identified the child and determined that they are in receipt of a suitable education. To ensure that data is not held on the database for longer than necessary, the statutory CME guidance will be revised to require local authorities to remove the information within 30 days of determining suitability of education provision.



7.9 The duration of the processing activity will be once a year, aligning with both the EOTAS report and the pupil level annual school census (PLASC) data capture submitted by schools, to Local Authorities.

## 8. How the data will be collected, stored, used and accessed

8.1 The Welsh Government is not the data controller; local authorities are required to consider these arrangements in further detail. The regulations require each Local Authority in Wales to establish a CME database that will contain the information in respect of children of compulsory school age who are ordinarily resident in the local authority's area, who are potentially missing education. The draft Regulations would also require Local Health Boards to submit basic non-clinical information on children within the LHB to the Local Authority. Local Authorities are required to cross reference the health data with existing education data for the purposes of removing information relating to children who are known to be in receipt of a suitable education. If implemented, the database would be a sub-set of the original dataset to include those not on PLASC, not on roll at an independent school, not EOTAS or EHE and known to be in receipt of a suitable education. Figure 1 illustrates the data flows between the data controllers.

8.2 The following data would be collected:

Information specified relating to a child who is ordinarily resident in a Welsh local authority area and is on roll at a maintained school, as identified by the PLASC data capture.	Already collected from schools and held by Local Authorities (PLASC)
Information specified relating to a child who ordinarily resident in a Welsh Local Authority area and is currently on roll at a registered independent school on the same date as the PLASC data capture.	Submitted to Local Authorities from independent schools under the 'Information Regulations'. The schools are the data controllers.
Information specified relating to a child who is ordinarily resident in that local authority's area as is available to the local health board.	Submitted to Local Authorities by local health boards. GPs and LHBs are data controllers.

8.3 All Local Authorities in Wales will be required to establish a children missing education (CME) database that will contain the information in respect of children of compulsory school age who are ordinarily resident in the local authority's area. All information on the database will be managed in accordance with WASPI and

the data handling/storage protocols, and retention and disposal schedules of each local authority.

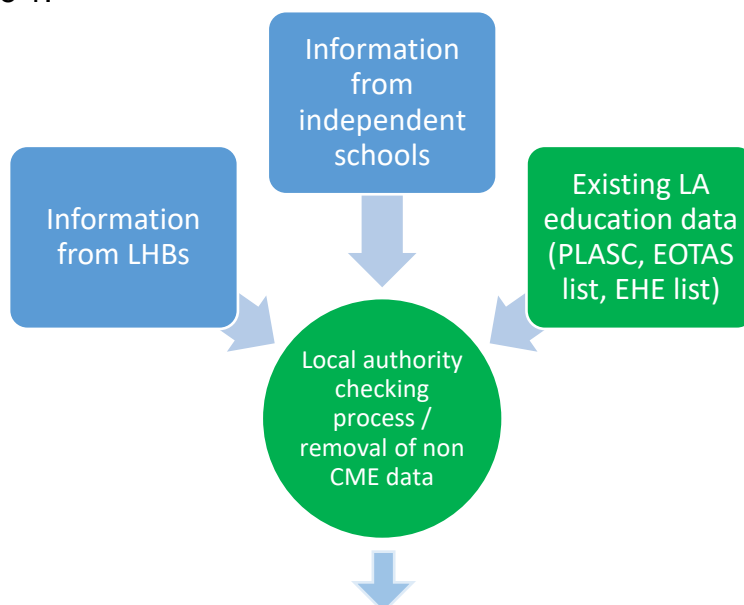
8.4 The information will be retained and used only by the local authority in order to exercise its statutory obligations and functions listed below:

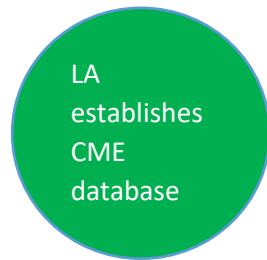
- (a) Part 6 (school admissions attendance and charges) of the Education Act 1996;
- (b) Section 175 of the Education Act 2002
- (c) Part 2 (additional learning needs) of the Additional Learning Need and Education Tribunal (Wales) Act 2018.

## 9. How the data will be processed

9.1 The draft Regulations do not specify how the data will be processed and this should be considered by the data controllers. **LHBs and LAs are the data controllers and would be responsible for establishing the process.** However, each local authority in Wales receives information from schools and would be required to process the data through the Data Exchange Wales Initiative (DEWi). DEWi is the secure portal for transferring data between schools, Local Authorities, and the Welsh Government. Data relating to children on roll at maintained schools in Wales is captured via the PLASC data collection. Data on EOTAS and EHE is also available within the local authority and is subject to each individual local authority's processes. Local Authorities will cross reference the education data with the information received from local health boards, to determine which children are not attending school, EOTAS or EHE and determined by the local authority not to be in receipt of a suitable education. Discussions have taken place with NHS Shared Service Partnerships and digital leads within local authorities, to finalise data sharing arrangements.

Figure 1.





9.2 The scope and frequency of the processing: The processing will involve comparing data from the sources described in paragraph 8.2 to help identify potential (CME) children missing education. If a local authority becomes aware that a child has, or is likely to become ordinarily resident in another local authority (“the receiving local authority”), then it must notify the receiving local authority and transfer that child’s education record.

9.3 The data held on the database will be restricted to that which is proportionate and necessary to ensure children of compulsory education age are receiving a suitable education. The data will not be routinely shared, and if data is shared it will require a purpose, a legitimate aim, such as ensuring a child or young person’s wellbeing.

9.4 The draft Regulations specify that the processing will be undertaken once a year. The processing aligns with the processing and submission of the annual PLASC data, to ensure that the capture is as accurate as possible for the comparison between data sets. The data is a ‘snapshot’ of the information at the time and will not be updated as and when new information is available. I.e., it will not be a ‘live’ database in this respect.

9.5 Sensitivity: A list of the personal data items is shown in paragraph 2.30, above. The list does not contain any special category data as defined under [UK GDPR](#).

9.6 How long will the information be retained?: All information on the database will be managed in accordance with the ‘Retention and Disposal Schedule’ of each local authority. Requirements for removing a child’s name are included within the regulations.

9.7 Who will be the owner of the information?: Each of the 7 Pilot Local Authorities in Wales will be the data controllers for their CME database and will be responsible for the database relating to their local authority area.

9.8 The context of the processing: Focusing on the overall aim of education purposes, the processing is to assist Local Authorities to comply with duties under section 175 of the Education Act 2002. It will enable Local Authorities to compile a reasonably comprehensive database of children who are potentially missing education or not in receipt of a suitable education.

9.9 The source of the data: There are two main points for data:

- Local Authorities
- Local Health Boards / GPs

**The Welsh Government will not access the data or be included in the data process.**

9.10 The extent to which individuals are likely to expect the processing: Individuals (data subjects) will not be aware of the processing. The majority of the information that will be shared is already held by local authorities. All information will be processed for comparison purposes but the majority will be removed. Only information about children who are not in school, not in receipt of EOTAS or EHE learners determined by the LA not to be in receipt of a suitable and efficient education will be held.

9.11 Whether they include children or other vulnerable people: The processing of this type of data is a criterion because of the increased power imbalance between the data subjects and the data processors. In this section, consideration has been made to those individuals that may be unable to easily consent to, or oppose, the processing of their data, or exercise their rights. Vulnerable data subjects include children as they have been considered as not able to knowingly and thoughtfully oppose or consent to the processing of their data.

9.12 Local and national experience has identified a number of risk factors that may hinder or prevent the engagement and identification of certain vulnerable groups. Although only a relatively small number of children and young people may be at risk, they often have complex needs from the outset due to difficult family dynamics, social or lifestyle factors, all of which may contribute to the withdrawal process and failure to make any successful transition. They may have experienced certain life events that make them more at risk of going missing from education and face tougher obstacles to re-engage with educational provision - [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).

9.13 The data that is submitted to the local authority may include potential vulnerable children, e.g.

- Children who are within the youth justice system;
- Children from homeless families perhaps living in temporary accommodation or a bed and breakfast;

- Children that live in women's refuges;
- Children from families fleeing domestic violence.
- Children from Gypsy, Roma and Traveller families.
- Children in the care system

9.14 The above categories have been identified as groups that are more likely than other groups of children to be missing education due to their potential transient status. Every Safeguarding region (which covers all local authorities) in Wales has a regional VAWDASV (Violence Against Women, Domestic Abuse and Sexual Violence Act 2015) action plan. The region will consider all safeguards where children are involved and provide guidance and action plans to LAs. All LA officers have to undertake Level 1 VAWDASV training including all staff in schools and a number are expected to be trained to Level 2 'Ask and Act'. This provides professionals with the relevant awareness and skills when working with and understanding this vulnerable group.

9.15 Other vulnerable groups to be considered:

- those with long term medical or emotional problems;
- young carers;
- children who have parents with mental health problems;
- children who have parents with learning difficulties;
- those affected by substance misuse;
- those who were previously educated within the Independent sector and have been excluded or withdrawn;

## Step three: Compliance

*In accordance with the law*

- 10.1 The proposals would be contained in secondary legislation, the draft Regulations which would be made under power in existing legislation, section 29 of the Children Act 2004. Section 29 provides a power to establish and operate a database, for the purpose of arrangements under section 175 of the Education Act 2002 (amongst other purposes that are not relevant for the Regulations). Section 175 places a duty on Local Authorities to make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children.
- 10.2 Consultations have taken place, which have included draft Regulations. Two separate 12 week consultations have been undertaken to enable those potentially affected to have their say. The first consultation took place in 2019, and the second 12-week consultation opened on 31 January 2024 and closed on 25 April 2024. Since the first consultation, the scope has been significantly reduced, and the proposal now, in the draft Regulations, provides that the database would only capture children who are potentially missing education and there would be robust retention and destruction provisions contained in the draft Regulations. A summary evaluation of the responses can be found here [Children missing education database | GOV.WALES](#).
- 10.3 The current legislative proposals should not be viewed as a standalone; rather the draft Regulations should be viewed alongside the statutory guidance that is in place. The '[Help prevent children from missing education](#)' statutory guidance was first published in 2010, and updated in 2017. It sets out the duties on Local Authorities to identify children who may be missing education and the steps they must take once the child is identified. The guidance sets out how parents and carers can avoid their child becoming classified as children missing education ("CME"). This is further reinforced in the statutory [Elective home education guidance](#).
- 10.4 The Regulations will be made under existing powers under [Section 29 of the Children Act 2004](#) to make Regulations that make provision in relation to the establishment and operation of any database or databases (for the purposes of arrangements under section 25 or 28 of the Children Act, or under section 175 of the Education Act 2002). The aim of the database is to provide Local Authorities with the necessary information to carry out their statutory duties in relation to education. The specific duties set out in the regulations are:

1. Part 6 (school admissions attendance and charges) of the Education Act 1996;
2. [Section 175 of the Education Act 2002](#) (duties of local authorities and governing bodies in relation to welfare of children); and
3. Part 2 (additional learning needs) of the [Additional Learning Need and Education Tribunal \(Wales\) Act 2018](#).

10.5 Section 175 of the Education Act 2002 requires Local Authorities to make arrangements for ensuring their education functions are exercised with a view to safeguarding and promoting the welfare of children. The Welsh Government considers that it is a reasonable exercise of this power for Welsh Ministers to make regulations that require the sharing of information to capture children potentially missing education, including those who are home-educated but where the local authority has been unable to determine that they are in receipt of a suitable education, are with a view to safeguarding and promoting the welfare of children, and that this would come within the scope of section 175 of the Education Act 2002.

10.6 Safeguarding and welfare are not defined in the Education Acts, however, the relationship between children missing education and safeguarding/welfare concerns is well established; it is defined in guidance issued under both the 1996 and 2002 Education Acts. The statutory [Keeping Learners Safe guidance](#), issued by the Welsh Ministers in exercise of their powers under section 175 of the Education Act 2002, defines safeguarding and promoting the welfare of children as “protecting children from abuse and neglect, preventing impairment of their health or development and ensuring that they receive safe and effective care to enable them to have optimum life chances”. Development is defined as “physical, intellectual, emotional, social or behavioural development”.

10.7 [The Help Prevent Children and Young People from Missing Education 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.

10.8 [Section 436A of the 1996 Act](#) places a duty on a LA to make arrangements to identify children in their area not receiving suitable education and to have regard to guidance from the Welsh Ministers in the exercise of that duty. Section 436A of the 1996 Act needs to be considered in the context of section 7 of the 1996 Act that provides that a parent must cause their child to receive efficient full-time education suitable to the child’s age, ability, aptitude and to any additional learning needs the child may have.



10.9 *Article 8 of the European Convention on Human Rights provides as follows:*

*1. “Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

10.10 Private life can cover multiple aspects of a person’s identity, and the relationship between parents and children is protected by family life. Family life encompasses a broad range of parental rights and responsibilities with regard to the care and upbringing of minor children. The protection of personal data is of fundamental importance to a person’s right to respect for private and family life.

10.11 The proposals contained in the draft Children Act 2004 (Children Missing Education Database) (Wales) Regulations (“the draft Regulations”) include the sharing of a limited amount of information, and would empower Local Authorities to compile a database of a narrow category of children: those ordinarily resident in their area, who are not registered pupils, and are not, or may not be, receiving a suitable education.

10.12 Any interference with Article 8, because it is a qualified right, is permissible if it is (a) in accordance with the law, (b) in pursuit of a legitimate aim, and (c) proportionate.

#### *Well-being of future generations act*

10.13 As regards the [Wellbeing of Future Generations \(Wales\) Act](#), 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 their socio-economic background and circumstances).

10.14 Children not already known to Local Authorities within any current data set could be identified as CME and would be subject to a local authority’s duties as defined in ‘Statutory guidance to help prevent children and young people from missing education ‘.

## *UNCRC*

10.15 A key driver for the proposals is the Welsh Government's long-standing commitment to children's rights based on the United Nations Convention on the Rights of the Child (UNCRC). Since the enactment of the Rights of the Children and Young Persons (Wales) Measure 2011, Welsh Ministers must 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 that respects, promotes and upholds children's rights. The database proposals have been amended to mitigate concerns whilst prioritising the education rights and welfare of children, including their rights to education and the best interests of the child.

## *GDPR*

10.16 Consideration has been given to the Guidance on UKGDPR and Children, and whether the proposals are GDPR compliant, and in particular the provisions relating to profiling and automated decision making. As with section 4.6 – 4.26, consideration has also been given to proportionality, whether there is a legitimate aim, and to the best interests of the child, as per Article 3 of the UNCRC.

## **Step 4: Assess necessity and proportionality**

11.1 The proposals are necessary because of the lack of an alternative system and because the sharing of basic information between health boards and local authorities has been determined as the most effective and accurate way of identifying children who are missing education. This assessment is supported by Local Authorities and by two separate data exercises (referenced in para 13.8, below) using the SAIL databank and ONS aggregate data on CME. The Background section within this DPIA (paragraph 2.) is also relevant to the necessity of the proposals and provides additional context. Section 13 provides information on the alternative methods that have been considered to meet this policy objective.

### **12. In pursuit of a legitimate aim**

12.1 In terms of determining whether such an interference is in pursuit of a legitimate aim, it must be in the interests of that specified in Article 8(2) of the ECHR. The draft Regulations are considered necessary to protect the rights of others; namely children who are not being provided with a suitable education, noting in particular Article 2 of the First Protocol ('No person shall be denied the right to education') and Articles 28 and 29 of the United Nations Convention on

the Rights of the Child (access to education and the aims of education). The draft Regulations would provide a mechanism for Local Authorities to undertake their statutory duties in relation to children they are currently unaware of.

12.2 Presently Local Authorities have no way of identifying children who are not registered in a school in that Local Authority, to determine whether such children are in receipt of a suitable education as there is only a requirement on parents to notify the Local Authority of their intention to withdraw a child from school to home educate. Parents do not have to inform the local authority if they decide their child will be home-educated before they are in the school system. *Whilst many parents do work with the local authority and make themselves/their child known, there are children the local authority does not know about (estimates provided at para 13.8) and therefore does not know if that child is in receipt of a suitable education.* The measure is required to ensure that such children are identified to enable the Local Authority to satisfy itself, as is required by Section 436A of the Education Act 1996, that such children are in receipt of a suitable education and if not, to enable the Local Authorities to take the necessary steps to protect the rights of children not in receipt of a suitable education. There may also be economic or health benefits too.

### **13. Proportionality**

13.1 In terms of determining whether such an interference is “proportionate”, the legitimate aim, as explained above, is a sufficiently important one to justify any potential limitation of a protected right (the sharing of information), and the measure is connected to that aim. Importantly there are a number of safeguards that would be provided for in the draft Regulations, and which are outlined further under the data protection principles (set out below). These safeguards include only holding names of children who are potentially CME on the database, as opposed to all children under the 2020 draft Regulations, reducing the data fields, limiting access, and limiting the use of the data.

13.2 The Local Authority database would only include information on a subset of children, namely those ordinarily resident in the Local Authority area, who are not registered pupils and are not, or may not be, in receipt of a suitable education, rather than all children per se. In addition, the information to be included on the database would be narrow and as prescribed in the Schedule (the child’s name, address and date of birth, together with all parents of the child and all persons providing the child’s education). “Parent” is defined within the draft Regulations and means any person with parental responsibility for the child (within the meaning of section 3 of the Children Act 1989(3)) or who has care of the child at any time. The draft Regulations would also include an obligation on a Local Authority to take reasonable steps to correct any inaccuracy or complete any record that may be incomplete.

- 13.3 The ability to access the database, as prescribed in the draft Regulations, would also be narrow. Only persons employed by the Local Authority in the exercise of their functions, and those functions are specified, would be able to access the database. The functions, as prescribed in the draft Regulations, would be those specified in Part 6 of the Education Act 1996, section 175 of the Education Act 2002 and Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018. These LA employees would require access to read the database to ensure awareness of information across departments, to identify the child on the database and provide the appropriate support so that the child's name could be removed from the database; this is the overall goal. Identification and support could be via the EHE team, safeguarding team, education welfare, or ALN/Inclusion officers.
- 13.4 Once a child who is potentially CME is located, the Local Authority would make informal enquiries of the family to determine whether the child is missing education. Parents would be asked to provide information to show that the child is in receipt of a suitable education and be informed of the steps they need to take for the child's name to be removed from the CME database. The enquiries would differ depending on the individual circumstances, but the family would always be provided with several opportunities to provide the Local Authority with the requested information. This process would align with the statutory CME guidance, section 7.33, which provides the following: *"Sections 437 to 443 of the Education Act 1996 place a duty upon local authorities to intervene where it appears a suitable education is not being received. Case law has established that a local authority may make informal enquiries of parents who are educating their children at home to establish that a suitable education is being provided"*.
- 13.5 Under section 7.34 of the guidance: *"Education authorities should seek to build effective relationships and regular contact with home educators that function to safeguard the educational interests and welfare of children and young people. Doing so will provide parents with access to any support that is available and allow authorities to understand the parents' educational provision"*.
- 13.6 Not providing the Local Authority with the requested information could result in the LA not being able to determine that the child is receiving a suitable education. In this instance the Local Authority would need to consider issuing a School Attendance Order which would require the parent to enrol the child at the school named in the order. As clarified under the statutory CME guidance, a School Attendance Order allows a period of 15 days for the parent to provide the requested information before the child must attend school – section 7.35: *... if they have good reason to believe that parents are not providing a suitable education, local authorities are able to serve a School Attendance Order on the parents. This will allow a period of at least 15 days for the parent to provide the*

*authority with whatever information they require to satisfy themselves about the suitability of the education.*

13.7 Unfortunately, there is no single solution that will help Local Authorities to identify all children they are responsible for, but the use of the data specified in the draft Regulations has been identified as the most effective and accurate way to identify CME. Work has been undertaken with partners to determine numbers of children thought to be missing from education in Wales, and to test this based on available data.

13.8 As the database would be produced by linking education data to health data, the feasibility of this approach has been tested via two separate methods. The first was to replicate the data linkage in the Secure Anonymised Information Linkage (SAIL) Databank. The anonymised SAIL databank data was compared with local authority data sets (PLASC, EOTAS and EHE data) and with an estimate for the cohort of school age children based on the population of Wales for that year. **Based on that year, the estimated total of children missing education for that year was 12,997.** This number was broadly consistent with those from the second method - a parallel exercise based on a comparison of aggregate figures from ONS mid-year population estimates for 5-15 year olds and from Welsh Government education data sources. Both exercises demonstrated the validity of comparing health and education data, but only a very narrow amount of data, and the potential numbers of children who may be unaccounted for.

13.9 Other data that has been considered include birth records, social services data, child benefits information, and tax information. However, the local authorities that have trialled these methods to identify CME have reported they find them unreliable and resource intensive. Birth data in particular has been found to be both unreliable and resource intensive due to the high number of families moving out of the birth area in the five years before the child is due to begin school.

13.10 Some Local Authorities have confirmed that they already have some arrangements (under section 25 of the Children Act 2004) in place with their Local Health Board to share data about children relating to children which supports their local CME processes and tells them about children they don't know about. They include social services or health visitor referrals when there is concern about a child, or other referrals from within the Local Health Board, including A&E attendance. However, most processes are not consistent across Wales and only capture a proportion of children who have already been seen by a health or social services professional (and therefore may have been referred to the education welfare officer anyway). For those Local Authorities with informal data sharing agreements with the Local Health Board, these current

arrangements would be formalised and potentially enhanced via the draft Regulations.

13.11 Data sharing arrangements are also in place between all Local Authorities and the police via [Operation Encompass](#). However, these only apply when the police are called to attend a domestic incident where children are present in the home. In these instances, information will always be shared with the Local Authorities and the child's school (if they are on roll). Where they are not on roll, some Local Authorities share this information with colleagues in social services. Both of these are examples of data sharing between public bodies to ensure the welfare of the child, however, these arrangements are reactive to a specific incident rather than a standardised process and may only capture a subset of children the Local Authority is not aware of. The draft Regulations mirror some of the existing arrangements in place in Wales but increase the scope to capture more children who are potentially CME, and remove the 'postcode lottery' for Local Authorities to be able to effectively protect the rights of children (their right to education).

13.12 *In our view, the proposals in the draft Regulations are not incompatible with Article 8 for the reasons above.*

## **14. Privacy and practical steps**

14.1 Article 35 of the UK GDPR says that any DPIA must consider "risks to the rights and freedoms of natural persons". This includes risks to privacy and data protection rights, but also effects on other fundamental rights and interests. The key provision considered here is Recital 75 of the UK GDPR, which links risk to the concept of potential harm or damage to individuals.

14.2 The Article 29 working party of EU data protection authorities has published guidelines with nine criteria which may act as indicators of likely high risk. The proposals may include the following criteria.

- Data processed on a large scale;
- Matching or combining datasets;
- Data concerning vulnerable data subjects.

14.3 As part of the policy development and assessment of proposals, wider consideration has been given to potential unintended consequences. This includes a risk that some parents may not register their children with GPs if they know the information will be shared with their Local Authority. It is highly unlikely that we would be able to devise a legislative or policy solution that would enable the systematic identification of every single home or non-educated child and young person in the absence of a system whereby the Government is able to track all its citizens (i.e. a system of compulsory identification). Alternative methods of meeting the policy objective have been explored in full (including

child benefit records, birth records, amongst others). There will be some parents who will not make themselves known to authorities, regardless of whether information sharing arrangements (via any route) are formally introduced, and will avoid detection by authorities seeking to identify children not known to them. However, the Welsh Government is of the view that this is not a good reason in itself not to pursue measures to attempt to identify the children in question.

## 15. Data protection principles

15.1 The following measures have been incorporated into the draft proposals:

- reduced scope of personal data collected; the data collected from each source is stated in the draft Regulations and is the legal minimum required to identify children of compulsory school age ordinarily resident in a Local Authority
- managing, limiting and controlling access to the data (as specified within the draft Regulations)
- protecting the classic 'CIA triad' (confidentiality, integrity, and availability) of personal data
- resilience of processing systems and services, and the ability to restore availability and access to personal data; and
- regular testing of the effectiveness of measures implemented.

### *Lawfulness, fairness and transparency*

15.2 The Children Act 2004 (Children Missing Education Database) (Wales) Regulations will be made using existing powers under the 2004 Act. Section 29 of the 2004 Act provides that the Welsh Ministers may, by regulations, make provision in relation to the establishment and operation of any database or databases under section 29. Within the Explanatory Note for this section, paragraph 70 states that the databases would be for the purpose of:

*...“facilitating contact between professionals who are supporting individual children or who have concerns about their development, well-being or welfare with the aim of securing early, coherent, intervention”.*

Additionally:

*“...the purpose of including the basic data set out in subsection (4) is to help practitioners identify quickly a child they have contact with, and whether that child is getting the universal services (education, primary health care) to which he or she is entitled”.*

15.3 The Regulations only provide a mechanism for Local Authorities to meet their duties (under section 175 of the Education Act 2002), and undertake the current processes outlined in the statutory '[Help prevent children and young people missing education guidance](#)' ("CME guidance"). The only "new" duty for Local Authorities is the mandatory creation of the database. The database process



aligns with the statutory CME guidance, which has been in place since 2010. The guidance already outlines the definition of CME and processes LAs will follow should a child be considered “CME”.

- 15.4 CME is defined within the CME guidance and refers to any child of statutory school age not in school, educated other than at school (EOTAS) or EHE and known to be in receipt of a suitable education. This is because establishing a database of just EHE children (the majority of whom are in receipt of suitable education) does not fully meet the policy objective, does not link with the Dylan Seabridge CPR recommendations and does not capture children who are not already known to the local authority. The statutory EHE guidance, provides further clarity to parents and carers on the LA role in relation to meeting their education functions in relation to EHE (and CME).
- 15.5 Children who are on roll at school but do not attend regularly are *not* within scope of the Section 436A duty (which requires LAs to make arrangements to establish the identities of children in their area who are *not registered pupils at a school and are not receiving suitable education otherwise than at school*). There are separate duties on local authorities to maintain standards of education provision at school, and mechanisms to support attendance. CME should not be conflated with poor or non-attendance at school.
- 15.6 The EHE statutory guidance is clear that being electively home educated is not in itself a safeguarding risk. Local Authorities already hold information on EHE children - provided that they have been notified by the parent or outgoing school that the child is or is due to become home educated – and Local Authorities have processes in place to ensure they can meet their duties in respect of these children. EHE children are only potentially at risk if a local authority cannot make contact, does not know about or not see the child (and therefore cannot determine whether they are in receipt of a suitable education). In these instances, the child should be classed as CME. As with the previous draft Regulations there will be a requirement on LHBs to share basic information about children registered with them with the relevant Local Authority.

*Purpose limitation and storage limitation*

- 15.7 As set out under para 8.4, under the Regulations Local Authorities cannot access the information in the database for purposes other than undertaking their education functions under: Part 6 (school admissions attendance and charges) of the Education Act 1996, Section 175 of the Education Act 2002, and Part 2 (additional learning needs) of the Additional Learning Need and Education Tribunal (Wales) Act 2018. The Regulations are for a specific purpose, underpinned by the statutory CME guidance. This is specified within the Regulations.
- 15.8 The provisions are further limited by the data deletion requirements within regulations 6 – 11, “procedure for removal of a CME record” (these requirements

are also relevant to storage limitation). Clear provisions on the retention and removal of data will be clearly set out within the statutory CME guidance, which will be revised to reflect the database requirements. To ensure that the data will not be held on the database for longer than necessary the guidance will state that when a child is no longer resident in the Local Authority area, their data should be removed within 30 days of the LA's determination that the child is no longer CME. When a child becomes a registered pupil or the Local Authority is satisfied that the child is in receipt of a suitable education, again their data would be removed within 30 days. Finally, if the child is deceased or ceases to be of compulsory school age, again their data would be removed as soon as practicable, and within 30 days.

- 15.9 Whilst the draft Regulations would require local health boards and GMS contractors to provide minimum information to the local authority on all children ordinarily resident in the Local Authority area, again in accordance with the Schedule, once the data comparison exercise is complete the Local Authority would remove such data received for the bulk of those on the list. This includes children known to be in receipt of a suitable education, i.e. children on roll at school, education other than at school and home educated children known to be in receipt of a suitable education. Once the data comparison exercise is complete data relating to those children who are not CME will be permanently deleted without undue delay (and at the latest within one month) in line with the Local Authority's retention and disposal schedule (as per ICO guidance). This requirement (to permanently remove the data that is not required for the CME database) will be specified within the statutory guidance that will accompany the regulations. The guidance will clarify that, on establishing the CME database the local authority will write to the parent to inform them that the child's name is included within the database, and request information from the parent to enable the local authority to be assured that the child is in receipt of a suitable education. The local authority will then continue to follow their CME processes; these are already set out within the current guidance and are embedded across local authorities. These arrangements should be undertaken without delay.
- 15.10 Parliament provides at sections 29(13) and (14) of the 2004 Act for any person establishing or operating a database under this section must in the establishment or operation of the database have regard to any guidance, and comply with any direction, given to that person by the Welsh Ministers. Section 29(14) provides that the guidance or directions may in particular (amongst other things) relate to the giving of advice in relation to rights under the data protection legislation. To ensure the data being compared can be matched effectively, the comparison exercise should be undertaken by local authorities within one month of receiving the health data. This expectation will be set out in the revised statutory CME guidance.
- 15.11 Included within the revised statutory guidance will be a requirement that only information relating to children who are potentially missing education would be retained for the database. Guidance will specify that the remaining information on children who are not CME will be removed without undue delay (and at the latest within one month). This is because the Local Authority will not require the data for the purposes of the database. **However, it should be noted that the**

**information that is permanently deleted is already held elsewhere by the Local Authority (the child's education record) as it relates to school age children.** The Local Authority would consequently use the information it retains for the database to locate the children to determine whether they are missing education. The information on those children would be removed from the database once the Local Authority is assured that these children are not missing education, or if it is required to under other provisions set out in the draft Regulations and as referred to below.

15.12 Whilst the information will be deleted from the CME database, any child who was previously CME will have an active education record within the LA until/unless they move out of the LA or cease to be of mandatory school age. Once removed, the information from the CME database would be included on the relevant education database within the LA, depending on the provision the child is receiving (school, EOTAS or EHE) and the same LA retention principles would apply to their data, in line with the respective retention schedule (for children's education records).

15.13 The Welsh Government does not intend to mandate periodic review of the data by LAs to determine if it is still necessary to hold the relevant data. The database is active, and a child's name is removed once they are no longer CME. Once the LA has a list of those who are potentially CME, they will work to identify and locate the child and will then begin the process of determining suitability of education. This process is already embedded in local authority processes when a child who is CME is identified, and a local authority follows steps as outlined in the guidance. If data is on the database, it is because the LA is actively undertaking enquiries as to the type and the suitability of education provision. Enquiries may be ongoing, depending on the level of engagement with the family, and the quality of evidence that is submitted.

#### *Data minimisation*

15.14 In line with the data minimisation principle, the Regulations require the *minimum* amount of information required to identify a child to be shared. The information from local health boards relating to children would be basic, non-clinical information, and is a reduction on the amount that would have been required under the draft 2020 regulations and was a change made following consideration of the 2019 consultation responses. Local Authorities have confirmed that the name, address and date of birth of each child is the absolute minimum amount that would be required to accurately match health data against their education data, although some LAs have emphasised that more data, including the child's NHS number, would be beneficial to ensure accuracy and ease of data matching.

15.15 The reduced scope of the draft Regulations aims to address the queries raised in the 2019 consultation about the proportionality of the proposals. The rationale for the draft Regulations is linked to section 175 of the Education Act 2002. This is a wider provision that places a duty on Local Authorities to undertake their education functions (as set out in the Education Acts) with a view to safeguarding and promoting the welfare of children living within their area. We

consider that this provision is more expressly linked to section 29 of the Children Act.

- 15.16 The content of the database may therefore include information on children that the Local Authority did not previously know about, but also information on children who are already known to the Local Authority, where it has been unable to undertake its education functions in respect of that child.

#### *Accuracy*

- 15.17 Officials have discussed the requirements with health officials, and consulted with NHS Shared Service Partnerships on the practicality/availability of this data and the feasibility of providing each data set securely to the relevant LA. NHS Shared Services Partnerships have confirmed that the information can be transferred. The requirements cannot be further reduced without impacting on the accuracy and security of the data. Local Authorities are of the view that including additional (non-sensitive) categories (e.g. parent national insurance number or NHS number) would ensure that children are correctly identified, and would assist with identifying children moving between LAs, including in England.

#### *Integrity and confidentiality (security)*

- 15.18 Article 3 of the UNCRC (the best interests of the child) whilst not specifically referenced within GDPR legislation, is a key consideration. The Regulations require the sharing of basic and non-clinical data to ensure that children are receiving their rights, and in particular their right to a suitable education. Local Authorities are required to have appropriate data protection and information security policies and processes in place to ensure that they maintain records of processing activities and have appointed a Data Protection Officer.
- 15.19 School to school (s2s) is a secure data transfer website available to schools and local authorities in England and Wales. It was designed to enable common transfer format (CTF) files to be sent from, and to, any maintained school. All maintained schools in Wales have a statutory responsibility to use the common transfer system (CTS) for Wales and England to transfer specific information electronically, via the 'school2school – s2s' website.
- 15.20 When learners move from one school to another, s2s is the mechanism for keeping track of them, ensuring they are not lost from the system, and that any significant information, for example special educational needs (SEN) or details such as 'Looked After' are immediately available to the new school. A CTF must be created for every learner who leaves a school, even if the destination is not a maintained school in England or Wales or the destination is not known.
- 15.21 The Lost Pupil Database is an additional tool used by Local Authorities and schools to ensure that children who are moving between LA areas and/or schools, are recorded securely, and that LAs can then take steps to locate them, in line with the CME guidance.

15.22 Authorities in Wales have specific security obligations under Article 32 of the UK GDPR. These requires them to put in place appropriate technical and organisational measures to ensure a level of security of the processing environment.

#### *Accountability*

15.23 LAs and LHBs will be the data controllers and have existing mechanisms in place to share data securely. Authorities in Wales have specific security obligations under Article 32 of the GDPR. These require them to put in place appropriate technical and organisational measures to ensure a level of security of the processing environment. Their existing processes would apply to the CME database.

### **16. Privacy impact on the child / child's access to personal information**

16.1 In assessing the impact of the data sharing on the child, the majority of children attend school or other registered setting, and this information is already held securely by the LA, via education records, and used by LA officers to undertake their education functions. The same data processing requirements would apply to the dataset obtained via the Regulations, to ensure that the data subjects (children) are not directly impacted by the processing of their basic, personal data. In the same way that children are not impacted by / conscious of the sharing of basic information under existing informal arrangements previously outlined, the data sharing process required under the Regulations would not directly impact children.

16.2 The majority of the information from the LHB, once cross-referenced, will be removed from the dataset as the Local Authority only needs it to check names against their education data. The Local Authority cannot use it for any other purpose, but the child's record is held elsewhere by the LA (either via the pupil level annual school census, EOTAS records, or EHE records – provided the parent has notified the LA that they are home-educating). Where the child is known to the LA but not on roll at school or EOTAS, the individual circumstances of that child will determine whether they are CME and included on the database. E.g. a child who is known to be EHE and the LA is content they are in receipt of a suitable education will be included within the LA's EHE records and is not CME.

## *Invisible processing*

- 16.3 Although parents of the child(ren) will not necessarily be aware of the data-processing as it is being undertaken, the Regulations align with the current Statutory guidance to help prevent children and young people from missing education', which was first published in 2010 and updated in 2017. The Welsh Government will not be the controller but is seeking to mandate a processing regime that may give rise to risks around invisible processing. Whilst recognising that this risk is ultimately with the data controllers, the data controllers may seek to rely on the exemptions within article 14(5) that the disclosure is required by domestic law and that the proposed regime and the guidance issued will provide appropriate measures to protect the data subject's legitimate interest.
- 16.4 The current guidance will be updated to include the database requirements, and to provide transparency on the process Local Authorities and Local Health Boards will follow to meet the requirements within the Regulations. This will include clear information on when a child's name would be included on the database, when it would not be included, the Local Authority's process and procedure of notifying the parent that the child has been identified as 'CME', and the evidence that a parent or guardian needs to provide to the LA for the child's information to be removed from the database.
- 16.5 Ultimately, it will be for the data controller to assess if they need to provide privacy information or if any of the exemptions apply. This has been considered by the Welsh Government as a potential risk within the overall proposal, however, the proposal is supported by local authorities (as controllers) and obtaining the information from a third party has been deemed the only way for local authorities to receive the information, which is required by them to undertake their statutory duties. All alternative routes that were considered (outlined in 11.1) would have also required data to be shared via a third party. Some of these methods have either been trialled by local authorities already or are in place in some local authorities via informal arrangements with the relevant body. There is no identified mechanism that would meet the policy objective that would not give rise to risks around invisible processing.

This DPIA may be subject to further changes as the policy develops.

## Step 5: Identify and assess risks

<b>Describe source of risk and nature of potential impact on individuals.</b> Include associated compliance and corporate risks as necessary.	<b>Likelihood of harm</b>	<b>Severity of harm</b>	<b>Overall risk</b>
1.The data is used for purposes other than the intended purpose of the Regulations	possible	significant	Low
2.Data beyond that required for the specified purpose is obtained and/or processed	remote	significant	Medium
3.Data is not validated prior to import and processing by LHBs. This could result in a database with data that is invalid or of poor quality, reducing the effectiveness of the new system to correctly identify CME.	possible	minimal	Medium
4.Unauthorised access to the data that would expose the location of vulnerable children	possible	severe	Low
5.Lack of or poor security controls (LAs and LHBs) - leading to loss of integrity, availability and confidentiality of personal data.	possible	significant	Medium
6.Invisible processing – children and/or their parents may not know that the data will be processed as part of the CME process, or the outcome of that processing.	possible	minimal	Medium
7.Parents / carers choose not to register their child with a GP to avoid detection by authorities or fail to seek medical help for their child.	possible	minimal	Low/ Medium



## Step 6: Identify measures to reduce risk

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5				
Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
1.	Database Regulations specify/limit the functions that the data can be used for. The statutory CME Guidance will be revised to reflect the purpose of the database.  LAs are aware of and have requested Regulations to ensure that they can undertake their <i>existing</i> statutory duties, not new functions.	Reduced/eliminated	Low	Yes
2.	Regulations specify the data to be shared.  Scoping work with LHBs / NHS shared services ahead of Regulations being made to ensure scope of data is understood	Reduced	Low	Yes
3.	Regulations to specify that each data controller must take reasonable steps to ensure the information supplied is accurate. Data controllers to have appropriate data validation procedures in place and rigorous cross referencing in each LA with Education Welfare Services, ALN Colleagues and Admissions officers so that LAs have a degree of assurance in identifying children.	Reduced	Low	Yes
4.	Existing safeguards are in place within LA to share information about vulnerable	Reduced	Low	Yes

	<p>children. LAs have systems to share children's information between schools, other LAs and public bodies. These include existing secure systems for data access and processing - DEWI, PLASC processes, S2S and WASPI.</p> <p>Access to the data is limited to LA staff who require access to do their job and for the purposes specified within the regulations. The regulations restrict access to the information.</p>			
5.	<p>Local authorities to develop /further develop or revise their information sharing protocols (ISPs) which clarify the circumstances under which information can and should be shared between agencies that support children. Each LA to put protocols in place to ensure that no contact or inappropriate disclosure is made with parent(s) that could put children or parent(s) at risk.</p> <p>All 22 local authorities have signed the WASPI. WASPI provides templates of data sharing agreements such as ISPs and Data Disclosure Agreements (DDAs) for local authorities to use.</p>	Reduced	Medium/low	Yes
6.	<p>The database is a mechanism to support an existing policy, which is already embedded across LAs (CME process).</p> <p>Ongoing engagement with public, revisions to CME statutory guidance to clarify the processing that will take place, and the steps parents/carers can take to</p>	Reduced	Medium	Yes

	<p>ensure information is not held on the CME database.</p> <p>The CME statutory guidance will be revised to include a description of the data sharing process under the regulations. This will include the steps a local authority will take to determine whether a child is CME, how the parent will be informed and the steps they can take to ensure their child is not CME.</p> <p><b>*Both the CME guidance and statutory EHE guidance already set out the requirements on parents to provide a suitable education and the risk of a child being 'in scope of the CME guidance' if the LA determines they are not in receipt of a suitable education. However, the documents can be amended to ensure greater emphasis on this requirement.</b></p> <p>A comms campaign will ensure greater awareness of the new requirements.</p>			
7.	<p>To mitigate this potential risk the data required from health has been reduced to the minimum amount required to identify a child. In the majority of cases, local authorities already hold the information.</p> <p>The regulations only require health data via GP registrations to be shared. Information collated as part of hospital admissions or routine appointments would not be shared. Children who are not registered with GPs would still</p>	Reduced as far as possible at this stage.	Low	Yes

	<p>be able to access these services.</p> <p>There are already existing duties on GPs and other professionals to share information about a child with the relevant body if it has concerns about a child. As these measures are already in place, those parents who intend to stay under the radar of authorities are likely to have already chosen not to register with a GP. The likelihood of parents choosing <i>not</i> to register with a GP (and therefore not seeking medical help) as a response to the introduction of the database regulations has been assessed as low. This is because parents who do not want authorities (e.g. social services) to know about a child will have likely already taken relevant steps to remain undetected.</p> <p>This potential risk cannot be fully measured at this stage but can be more accurately assessed following the pilot by comparing census data with the completed education data set (PLASC, EOTAS, independent schools, CME and EHE lists).</p>			
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