

# Elective Home Education

Y Pwyllgor Deisebau | 7 Gorffenhaf 2020  
Petitions Committee | 7 July 2020

**Reference:** RS20/12937-2

**Petition Number:** P-05-969

**Petition Title:** Investigate the Draft Education Database Regulations 2020 - unnecessary and a breach of human rights

**Petition Text:** We call on the National Assembly for Wales to investigate:

- 1) What evidence the Welsh Government has used in the creation of the Integrated Impact Assessment for the Draft Regulations Consultation (WG 39220) that:
  - a) suggest the current Child Missing Education Regulation is failing to identify significant numbers of children
  - b) How a database & the previous draft guidance (2019) will meet the targets of the Integrated Impact Assessment?
- 2) What evidence indicates that EHE [elective home education] children are at increased risk of being NEET or not reaching their full potential?
- 3) Clarification. Is there a longer-term goal to bring about monitoring/regulation of educational content/curriculum with regular testing for EHE in order to meet the aims stated in the guidance & Integrated Impact Assessment.
- 4) Investigate the lack of safeguards proposed in the Draft Regulations to prevent them from being used as a tracking tool of families?



5) Investigate the level of consultation with Health Boards on the impact these Draft Regulations will have on them & why there is no costing or impact assessment for the Health Service provided with this consultation?

a) How would any cost & burden on the NHS be justified?

6) Investigate the level of consultation with other minority groups (GRT Communities, Refugee & Asylum seeker & families of children attending Independent Schools) to ensure their views have also been ascertained?

7) Investigate are costs suggested in the Draft realistic & do they constitute an effective & efficient use of taxpayers monies in light that there are already sufficient regulations in place to enable LAs to identify children who are missing education with mechanisms to enable LAs to seek Education Supervision or School Attendance Orders where a child is identified as missing education?

Would it be more effective & efficient to instead increase funding & support for social services?

## 1. Background

Parents may elect to educate their children at home for many reasons. These may be ideological or philosophical views which favour home education, or wishing to provide education which has a different basis to that normally found in schools. Parents may also be dissatisfied with the school system, or the school at which a place is available. Other reasons may include bullying of the child at school, health reasons, particularly mental health of the child, a child's unwillingness or inability to go to school, including school phobia or special educational needs, or a perceived lack of suitable provision in the school system for those needs.

The [Welsh Government publishes data](#) on the number of children who are known to be electively educated at home. In the 2018/19 academic year **2,517 children were known to be electively home educated in Wales**. The rate of elective home educated pupils increased in 2018/19 **to 6.6 out of 1,000**, from 5.5 out of 1,000 in 2017/18. As parents notify their local authority that they are home educating their children on a voluntary basis (unless they have withdrawn their child from school), these data may not include all electively home educated children.

## 1.1. Legal background

Parents may educate their children at home providing they fulfil the requirements of section 7 of the Education Act 1996:

7. Duty of parents to secure education of children of compulsory school age.

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable –

(a) to his age, ability and aptitude, and

(b) to any special educational needs he may have,

either by regular attendance at school or otherwise.

There is no current duty for local authorities to monitor the progress of home-educated children. However, under section 436A of the Education Act 1996, local authorities have a duty to make arrangements to identify children not receiving a suitable education:

**436A Duty to make arrangements to identify children not receiving education**

(1) A local authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but

(a) are not registered pupils at a school, and

(b) are not receiving suitable education otherwise than at a school.

## 2. Welsh Government action

Between September and November 2012, the Welsh Government consulted on proposals to legislate to introduce a compulsory registration and monitoring scheme for elective home educated children. Huw Lewis, then Cabinet Secretary for Education and Skills, explained in a [statement on 6 May 2014](#) that he had decided not to introduce legislation, but the Welsh Government would issue non-statutory guidance.

Following a [consultation](#) in May 2015, [Elective home education, Non-statutory guidance for local authorities](#) was published in January 2017. The guidance seeks to clarify the rights of home-educating parents/carers and the responsibilities of local authorities and provide guidance to local authorities on developing and maintaining relationships with families who home-educate their children. In a [statement on 9 January 2017](#) accompanying the publication of the guidance, Kirsty Williams, the Cabinet Secretary for Education said , , that whilst the guidance sought to strike an appropriate balance:

I believe we need to adopt a more robust approach to education provision for all children, regardless of where that education is provided. This guidance will form part of a package of measures I'm considering to support local authorities, the home educating community and alternative providers, including the potential for introducing legislation.

On 29 July 2019, the Welsh Government published a consultation on [draft statutory guidance for local authorities on home education along with a handbook for home educators](#). The consultation states local authorities have called for ‘more robust guidance’ than the 2017 non-statutory guidance in terms of identifying children and young people not receiving a suitable education, and on assessing the suitability of home education. Between 30 January 2020 to 13 May 2020, the [Welsh Government consulted](#) on the Draft Children Act 2004 Database (Wales) Regulations 2020 and the Education (Information about Children in Independent Schools) (Wales) Regulations 2020. The regulations would require:

- each local authority to establish and maintain a database to assist them in identifying children not on any maintained school’s roll, education other than at school (EOTAS) roll, or independent school roll, and not receiving a suitable education
- local health boards to disclose to local authorities non-clinical information about a child who is ordinarily a resident in that local authority’s area
- independent schools to disclose information regarding learners registered at their establishment to a local authority.

In a [Written Cabinet Statement on 22 June 2020](#), the Minister for Education announced that, due to the significant impact of Covid 19 on Welsh Government resources, it will not now be possible to complete the planned work on the home education statutory guidance and database regulations within this Government term (up to May 2021). The Minister said that she hoped that the planned reforms would be taken forward by the next Government.

## 2.1. Children’s Commissioner for Wales

In her previous three annual reports, the Children’s Commissioner for Wales has called on the Welsh Government to make significant policy changes to ensure that children educated at home are not invisible and that they receive all of their human rights. This includes their right to education, their right to participate in decisions about their lives and their right to be safe.

At the time of the Children’s Commissioner’s [2018-19 annual report](#) (published in October 2019), she recommended that the Welsh Government publish their updated policy with the aims of meeting the following three tests in full:

- That all children in Wales can be accounted for and that none slip under the radar of universal services and society in general;

- That every child receives a suitable education and their other human rights including health, care and safety;
- That this cannot be achieved without enabling every child the opportunity to be seen and their views, including their views about their education, and experiences listened to.

In response to the Minister's announcement that the regulations and guidance would not proceed this Senedd term, [the Children's Commissioner for Wales](#) said that she has written to the Minister to express her 'enormous disappointment' at this decision; setting out her concerns and a number of questions that she believes need to be answered about how the decisions were reached. She said:

I have previously indicated that I would use my statutory powers to review the Welsh Government's exercise of their functions if little progress had been made to better protect the rights of home educated children. I have reiterated this to Government in my letter and await their response to the several questions I have raised about the decision-making that has recently been undertaken and how children's rights have been considered and upheld as part of this.

## 3. Welsh Parliament action

### 3.1. Petitions Committee

There have been five previous petitions on the subject of home education. Two relating to the draft statutory guidance are currently being considered by the Committee. :

- [P-05-922 Withdraw the proposed home education guidance](#). This was submitted by Wendy Charles-Warner having collected 5,447 signatures.
- [P-05-923 Are you listening to us? Home Education Rights and Respect!](#) submitted by Mountain Movers Education Charity having collected a total of 512 signatures.

The Committee last considered both petitions on 4 February 2020 and agreed to:

- write to the Children's Commissioner for Wales to seek her view on the issues raised and how, in her view, the appropriate balance can be struck between the competing interests on this matter;

- seek further written evidence from bodies which represent home schooling in Wales; and
- invite the Minister for Education to provide evidence to a future committee meeting.

The three previous petitions which were closed were:

- **P-04-646: Petition against Welsh Draft Non-statutory Guidance for Local Authorities on Elective Home Education** was considered by the Petitions Committee in 2015. The then Minister for Education and Skills addressed the petitioner's concerns and agreed to ensure that their views would be taken into account in developing the new guidance. The petition was therefore closed.
- **P-04-517: Stop the Welsh Assembly Government from bringing in the monitoring of electively home educated children under the guise of safeguarding** was considered between November 2013 and June 2014; and
- **P-04-437: Opposing compulsory registration for home educating children** was considered by the Petitions Committee between November 2012 and June 2014. The petition's originator has submitted one of the petitions currently under consideration by the Committee (P-05-922, Withdraw the proposed home education guidance).

Huw Lewis, Minister for Education at the time announced in May 2014 that, following consultation, he had decided not to legislate for a compulsory registration and monitoring scheme during the current Assembly term. Both petitions (P-04-517 and P04-437) were therefore closed.

## 3.2. Children, Young People and Education Committee

The Children, Young People and Education Committee has maintained an interest in elective home education and has corresponded with the Minister for Education and the Children's Commissioner for Wales and others:

- 28 February 2018: **Letters between the Minister for Education and the Children's Commissioner for Wales about planned statutory guidance and database**
- 22 November 2018: **Letter from the Children's Commissioner for Wales to the First Minister**

- 28 November 2018: **Letter from the Cabinet Secretary for Education to the Children's Commissioner for Wales**
- 10 January 2019: **Letter from the Children's Commissioner for Wales**
- 30 January 2019: **Letter from the Children's Commissioner for Wales**
- 18 July 2019: **Letter from the Children Commissioner for Wales** and **Letter from the Minister for Education**
- 14 November 2019: **Letter from Protecting Home Education Wales regarding the draft statutory guidance for local authorities on home education** and **Email the Trustee and Welsh Liaison for Education Otherwise regarding the draft statutory guidance for local authorities from on home education**
- 19 November 2019: The **Committee has written to the Minister for Education (19 November 2019)** seeking clarification on the legal issues with regard to the guidance.

## 4. Position in England

Following an earlier call for evidence, on 2 April 2019 the UK Government's Department for Education published a **consultation on proposed legislation concerning children not in school**. The consultation closed on 24 June 2019.

The consultation sought views on proposals to create four new duties:

- A duty on local authorities to maintain a register of children of compulsory school age who are not registered at a state-funded or registered independent school.
- A duty on parents to provide information to their local authority if their child is within scope of the register.
- A duty on education settings attended by children on the register to respond to enquiries from local authorities about the education provided to individual children.
- A duty on local authorities to provide support to home educated families if requested by such families.

The UK Government has not yet published its response to the consultation.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.