

**Explanatory Memorandum for:**

- *The Education (Information About Individual Pupils) (Wales)(Amendment) Regulations 2011*

This Explanatory Memorandum has been prepared by the Department for Education and Skills (DfES) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the above listed Regulations.

*Leighton Andrews*

Minister for Education and Skills, one of the Welsh Ministers

20 September 2011

## EXPLANATORY MEMORANDUM

### 1. Description

This legislation will reflect additional data requirements on individual pupils to support the promotion of race equality and cultural diversity within education and to enable the sharing of data with the Skills Funding Agency who provide the Learning Records Service for the purpose of allocating Unique Learner Numbers (ULNs) to pupils aged 13 as at the 31 August preceding the PLASC data collection.

### **The Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2011**

These Regulations will amend the Education (Information About Individual Pupils ) (Wales) Regulations 2007 which govern the requirement on governing bodies of any maintained school to supply specified information in respect of pupils at the school.

Additional data items to be included in the PLASC are;

- details of the pupils stage of language acquisition where English (or Welsh) is an additional language  
*EAL Category A to E*
- details of the pupil's home language  
*Three digit language code from the approved language code list (001/2011)*
- details of a learner's Unique Learner Number (ULN) where one exists.  
*A ten digit number allocated to the individual learner by the Learner Records Service*

Additional persons with whom the Welsh Ministers may share individual pupil information are;

- the Skills Funding Agency, of which the Learner Records Service (LRS) is a component part
- any body recognised by the Welsh Ministers in respect of the award or authentication of particular qualifications or description of relevant qualification
- Ofqual and those awarding bodies recognised by Ofqual.

### **English as an Additional Language (EAL) Stage**

To support policy development and better support the equalities agenda at a local and national level, a data item on stages of language acquisition is being introduced for pupils from minority ethnic backgrounds.

The data will be very useful for schools in assessing the attainment and progress of pupils learning EAL as part of their self evaluation process and for comparison purposes. The data will also provide Local Authorities (LAs) and the Welsh Government with a baseline for analyses and reports to support monitoring of progress by this group of learners and will contribute considerably to measuring the impact of the Welsh Government's Minority Ethnic Achievement Grant (MEAG).

Pupils make progress in acquiring English as an additional language in different ways and at different rates. Broad stages in this development are identified as descriptions to be applied on a **'best-fit' basis** in a similar manner to the National Curriculum level descriptions. Progression from stage A to stage E can take up to 10 years and individuals are likely to show characteristics of more than one 'stage' at a time. A judgement is usually needed over which stage best describes an individual's language development, taking into account age, ability and length of time learning English.

Details of pupils' stages of EAL are surveyed annually by specialist Ethnic Minority Achievement Services (EMAS) or EAL services within Local Authorities.

**Valid EAL categories are:**

<b>A = new to English</b>	May use first language for learning and other purposes. May remain completely silent in the classroom. May be copying / repeating some words or phrases. May understand some everyday expressions in English but may have minimal or no literacy in English. Needs a considerable amount of EAL support.
<b>B = Early Acquisition</b>	May follow day to day social communication in English and participate in learning activities with support. Beginning to use spoken English for social purposes. May understand simple instructions and can follow narrative / accounts with visual support. May have developed some skills in reading and writing. May have become familiar with some subject specific vocabulary. Still needs a significant amount of EAL support to access the curriculum.
<b>C = Developing competence</b>	May participate in learning activities with increasing independence. Able to express self orally in English, but structural inaccuracies are still apparent. Literacy will require ongoing support, particularly for understanding text and writing. May be able to follow abstract concepts and more complex written English. Requires ongoing EAL support to access the curriculum fully.

<b>D = Competent</b>	Oral English will be developing well, enabling successful engagement in activities across the curriculum. Can read and understand a wide variety of texts. Written English may lack complexity and contain occasional evidence of errors in structure. Needs some support to access subtle nuances of meaning, to refine English usage, and to develop abstract vocabulary. Needs some/occasional EAL support to access complex curriculum material and tasks.
<b>E = Fluent</b>	Can operate across the curriculum to a level of competence equivalent to that of a pupil who uses English as his/her first language. Operates without EAL support across the curriculum.
<b>0 = Not Applicable</b>	

Categories “A” to “E” in EAL will be required only for *pupils learning EAL* in schools, including for those who are in receipt of support by the specialist EMAS or EAL Services and for those who are not.. For all other pupils, category “0” (not applicable) should be completed.

**First language**

Circular number 001/2011 (January 2011) set out guidance on the recording and collection of data on pupils’ first language.

The Welsh Government is committed to giving the children of Wales the best start in life, through providing a first-class education for all children, whatever their social origins or wherever they live.

Promoting race equality and cultural diversity is an ongoing and constantly developing aspect within education. The collection of first language data for pupils of compulsory school age in all maintained schools will, together with other information collected through PLASC, make a major contribution to the planning and implementation of strategies which promote equality, value diversity and support the educational inclusion of all pupils.

It will also help the Welsh Government, LAs and schools to understand what effect having English as an additional language has on pupil attainment and how best to cater for pupils with additional language development needs.

Since there is already bilingual educational provision in Wales for pupils whose first language is English and/or Welsh, the primary focus of this data collection is to gather and collate information about the **other** first languages of pupils in Wales. The data will complement the existing information collected by the Welsh Government via PLASC on pupils’ ethnic backgrounds and levels of English language acquisition of pupils for whom

Valid language codes are as set out in Guidance Circular number 001/2011

### **Unique Learner Numbers**

The Welsh Government wishes to facilitate the allocation of Unique Learner Numbers (ULNs) for pupils aged 14<sup>1</sup> and over in maintained schools in Wales. This will support a number of functions, specifically in the first instance it will assist with data aggregation for the Welsh Baccalaureate Qualification.

The Unique Learner Number is a ten digit number that is allocated to an individual as a means of recording achievement and providing secure access to learner information and learning events.

The Learner Records Service was formerly known as Managing Information Across Partners (the MIAP Programme). It is part of the Skills Funding Agency and delivers a number of services for learning providers and learners across the education sector in England, Wales and Northern Ireland.

The Service allocates Unique Learner Numbers (ULNs) to individuals in education and training; it has developed a Personal Learning Record, which supports the Qualifications and Credit Framework (QCF), and can be accessed via a web portal enabling learners to view their own records of participation and achievement, which they can choose to share with advisors, providers and potential employers; it maintains a Provider Register; and has developed a set of common data definitions to facilitate data sharing across the sector.

Further information about the Service can be found at <http://www.learningrecordsservice.org.uk/about>

Where a learner has a valid ULN held in the school MIS then this should be included in the school PLASC return.

### **Prescribed Persons**

The Welsh Government is working to implement a procedure that will facilitate the exchange of data between schools and the LRS for the purpose of generating ULNs for learners. This approach will minimise burdens, maximise accuracy and ensure security of data transfer.

All learners will be required to receive a Privacy Notice in advance of their data being submitted, individual learners can refuse consent, no data will then be provided and no ULN allocated.

Because the data exchange will be facilitated through the DEWi secure transfer service we require the Skills Funding Agency, of which the Learner

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<sup>1</sup> That is pupils aged 13 as at 31 August preceding the relevant PLASC collection data

Records Service (LRS) is a component part, to be prescribed as a person with whom Welsh Ministers may share data.

The inclusion of Ofqual and Awarding Organisations recognised by Ofqual will ensure that learner records associated with ULNs for learners in Wales are complete even if qualifications are undertaken with Awarding Organisations not recognised in Wales.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

This subordinate legislation will impose negligible additional costs or burdens on schools and local authorities. As a result, no regulatory impact assessment has been undertaken in relation to these Regulations.

## **3. Legislative background**

The Welsh Ministers' powers to make these Regulations are derived from sections 537(A) (1), (2) and (4), 569(4) and (5) of the Education Act 1996.

The functions in the Education Act 1996 were conferred on the Secretary of State and transferred to the National Assembly of Wales by way of the National Assembly for Wales (Transfer of Functions) Order 1999. Those Education Act 1996 functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

## **4. Purpose and intended effect of the legislation**

The legislation is intended to implement the Welsh Government's policy on collecting, publishing and sharing information about schools and pupils. That policy is being implemented in response to changes in policy such as the introduction of the Foundation Phase and the actions outlined in the Minister's speech of 2 February 2011.

The proposed changes to these Regulations align existing practice more closely to the policy changes which have occurred since the existing Regulations were laid or amended. Specifically, the revised Regulations will support the following policy objectives.

## **5. Consultation**

Officials have carried out substantial informal consultation engaging with and discussing our intentions with ADEW, school leaders and other stakeholder groups. Circular number 001/2011 (January 2011) set out guidance on the recording and collection of data on pupils' first language. Privacy Notices are issued to individual learners, or their parents, setting out the data collected, held and processed about them and providing guidance on rights in relation to data access, withholding consent for certain data items to be shared and how to make amendments to data if found to be incorrect.

There is nothing contentious or significant within the changes proposed and I therefore considered that a formal consultation on the data collection requirements was not necessary on this occasion.