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THIS WAS WRITTEN BEFORE THE RELEVANT LAW WAS COMMENCED AND THE SMALL SCALE PILOT BEGAN IN APRIL 2025. SEE <https://edyourself.org/pilot-areas-wales-cme-database/> THIS PAGE WAS ARCHIVED AT THE END OF MARCH 2026 [LINK]

Children Missing Education – The Law

The Welsh government is currently seeking to stretch the law on children missing education. **Wales wants to keep the same law but change the meaning.** There is a [consultation](#) running till April 25th to **test the limits of existing legislation.**

Section 436A of the Education Act 1996 is headed “Duty to make arrangements to identify children not receiving education” **Section 436A(1)** says “*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*” [SOURCE]

Potentially Missing Education – Beyond Law

The Welsh government is currently seeking to stretch section 436A **beyond the provisions of the law.**

Wales wants to change the meaning on the face of the Act via secondary legislation. There is a consultation closing on April 25th 2024 with draft regulations saying that a child **must go on a CME database** if “*it appears to the local authority that the child is not, or **may not be**, receiving a suitable education*”. The local authority must then complete “**a CME record**” for each child on the database. Read the draft regulations [here](#)

The law says CME is about children who **are not** receiving suitable education. Wales wants CME to be about children who **might possibly not be** receiving suitable education.

In [the document](#) published with the CME Database consultation, the Welsh government has begun the process of altering the meaning of 436A by referring to children “**potentially missing education.**” My guide to the Wales CME Database consultation is here <https://edyourself.org/guide-to-wales-cme-database/>

The proposed new definition of Children Missing Education for Wales **also reverses the position in its own statutory guidance** which refers to “*a database of children not currently in suitable education*” after it has been “*considered that home education provision was not suitable*” ie after the LA has not been satisfied and has reached a **definite negative decision.** [Source = [CME Guidance p 92](#)]

Testing Limits Existing Legislation

Wales appears to be testing the limits of existing legislation. The CME database regulations will require **approval by resolution** of Senedd Cymru which means they are subject to the affirmative procedure as explained [here](#). The page also explains the role of the Legislation Justice and Constitution Committee in scrutinising Statutory Instruments. [This link](#) provides further information about Statutory Instruments requiring Senedd consent.

CME England

Section 436A applies to England and Wales <https://www.legislation.gov.uk/ukpga/1996/56/section/436A>. The English government is clear that “CME **does not** include children who are receiving suitable EHE, or the local authority has not had an opportunity to assess whether they are receiving suitable EHE”. **If parents say they are home educating then the child will be counted as home educated** unless and until the home education is “deemed unsuitable”. Read more here <https://edyourself.org/children-missing-education/#definition>

The guidance for England is clear that this is designed to **prevent double counting** so that a child cannot appear in the home education numbers and the CME numbers. (Wales [asks LAs for home education numbers](#) but **does not appear to ask for CME numbers** so has perhaps not considered the double counting issue)

In other words, England – following s436A – says CME **does not** include children where the local authority has not had an opportunity to assess, whereas Wales hopes to be allowed to say **the opposite**. (For the avoidance of doubt, the English CME Data Collection guidance is **NOT** saying that LAs are **required** to assess home educated children)

Consultation

When children are identified as missing education the local authority must make sure that action is taken to provide them with suitable education which may also involve support arrangements [[CME Statutory Guidance Wales](#)]. **The consultation includes some questions about children missing education**. It would be relevant to query the Welsh government’s **making changes to section 436A**. It would also be relevant to ask how having “a CME record” will **help the child or young person**.

- **Q1** asks among other things if you think the regulations will help local authorities to identify children missing education
- **Q2** asks among other things if the proposed database helps local authorities to undertake their education functions with a view to safeguarding and promoting the welfare of children
- **Q3(i)** asks among other things if it is reasonable and proportionate for health services to pass on children’s details so that the local authority can develop a database of children who may be missing education
- **Q3(ii)** asks among other things if the local authority will be getting enough information from health services about children “who may be missing education”

CME Numbers Wales

I assumed that local authorities in Wales will **already be tracking the numbers of children missing education** so that there is a baseline for comparison but I can’t find any statistics [here](#), so I am making some Freedom of Information [FOI] requests which can be viewed here https://www.whatdotheyknow.com/user/fiona_nicholson_3/requests