

THE LAW RELATING TO ELECTIVE HOME EDUCATION (EHE)

The responsibility for a child's education rests with their parent(s), and the law only provides for Local Authority (LA) involvement where there are specific concerns that a parent is not fulfilling this responsibility. In England, education is compulsory, but school is not. All information in this document in italics is taken directly from English law, and the rest directly from Government guidelines. Any LA policies which do not comply with these are not legally enforceable, and LA officials are often completely unaware that their policies may contravene existing primary UK and international law.

Section 7 of the Education Act 1996 :-

"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."

A system of education has been defined in case law as **efficient** if it achieves that which it sets out to achieve, and **suitable** if it "primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so". School definitions of **full time education** are not relevant to elective home education - measurement of "contact time" is not relevant to elective home education where there is often almost continuous one-to-one contact and education may take place outside normal "school hours".

The type of educational activity can be varied and flexible. Home educating parents are not required to:

- teach the National Curriculum
- provide a broad and balanced education
- have a timetable
- have premises equipped to any particular standard
- have any qualifications or training
- set hours during which education will take place
- make detailed plans in advance
- observe school hours, days or terms
- give formal lessons
- mark work done by their child
- formally assess progress or set development objectives
- reproduce school type peer group socialisation
- match school-based, age-specific standards.

Local authorities must be mindful of Article 8 of the European Convention of Human Rights which states:-

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

Where a parent elects not to allow access to their home or their child, this does **not** of itself constitute grounds for concern about the educational provision being made.

Children learn in different ways and at different times and speeds. It must be appreciated that parents and their children will require a period of adjustment before finding their preferred mode of learning. Characteristics of the educational provision will evolve and develop.

Truancy / Children not Receiving Education / School Attendance Orders

There is no obligation in law for the parent to inform the local authority of the decision to home-educate, or of de-registration from school. It is the legal duty of a school to notify the authority of de-registration, and to immediately remove the child's details from their register. The only exception to this is where the child is a registered pupil at a special school, when consent from the LA is required but cannot be unreasonably withheld.

Home educated children and young people are not the target of truancy sweeps, and are not required to comply with requests for information / identification. Section 3.3.16 of the ***Statutory Guidance for Local Authorities in England to Identify Children not Receiving Education*** confirms that if they are told that a child is being home educated then no further action should be taken.

If a parent on whom a School Attendance Order has been served fails to comply with the requirements of the Order they are guilty of an offence under section 443 of the Education Act 1996, unless they prove that the child is receiving a suitable education otherwise than at school.

Statements of Special Educational Needs

Children with statements of SEN can be educated at home. Where the local authority maintains a statement for the child, the authority is responsible for arranging that the special educational provision specified in the statement is made for the child, unless the child's parent has made suitable alternative arrangements, which meet the child's needs and are suitable to their age ability and aptitude (section 324(5)(a) of the Education Act 1996). It remains the parent's duty to provide a suitable education for the child.

Safeguarding

Local authorities can only insist on seeing a home educated child if there is cause for concern about the child's safety and welfare (section 47 of the Children Act 1989). Where there are concerns about the child's safety and welfare, Local Safeguarding Children Board procedures must be followed (e.g. evidence of risk of serious harm)

EHE Guidelines for contact with parents

Without specific concerns, there is no legal requirement for LA contact. LAs are encouraged to address concerns informally, e.g. by asking parents for information about the education they are providing. It is recommended that this contact should normally be made in writing, and parents given the opportunity to address any specific concerns that the authority has. The child should also be given the opportunity, but not be required, to attend any meeting that may be arranged or invited to express his or her views in some other way.

The LA has no authority to dictate the structure of the contact. Parents are not legally required to give the local authority access to their home. They may choose to meet a local authority representative at a mutually convenient and neutral location instead, with or without the child being present, or choose not to meet at all. Where local authorities are not able to visit homes, they should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. Parents might prefer, for example, to write a report, provide samples of work, have their educational provision endorsed by a third party, or provide evidence in some other appropriate form.

DISCUSSION OF SOME OF THE MAIN LEGAL ISSUES re EHE

Since the legal responsibility for a child's education rests with the parents, and not the state, the LA have no power to refuse "permission", or otherwise prevent parents from fulfilling this duty directly. The local authority could not refuse "permission" to home educate without assuming responsibility for the education of all children, which would mean that they would be open to legal action by children and parents who were not satisfied with the provision they receive, whether in school or otherwise.

When parents choose to send their child(ren) to school, they are effectively sub-contracting their duty to ensure (s)he receives a suitable education. Schools need to be registered and monitored in order to be held accountable to these parents. Parents do not need to register to perform their legal duty regarding education, they simply need to formally de-register their children from school when they decide on EHE.

The fact that the Treasury has identified 1 in 6 as the number of children leaving school functionally illiterate and innumerate, brings into question the current focusing of resources on the minority of children who are home educated. There is no evidence that EHE children are receiving an inferior education to schoolchildren, and academic research into home education indicates that home-educated children do significantly better than school-educated children. Addressing the rights of children to receive a suitable education in school is far more urgent, and intervention here would at least be on the basis of compelling evidence. Any achievements and attainment data given by the school following de-registration could be very subjective, and would be vulnerable to influence by other motives, including loss of income for each child that deregisters, impact on school league tables, the reputation of the school, and possibly even a desire to set parents out to fail.

To assess and continually review the educational needs, preferences and achievements of each individual child without them having to be compared to any pre-determined values for these would be very expensive, and in all but a tiny minority of cases would be a mere shadow of the child's parents existing assessment of these. Requests for some form of educational plan / targets for the year ahead inhibits the ability and willingness of the parents to allow the approach over the year to adapt to the child's changing needs and interests. This freedom is exactly what makes home-education "suitable" for that particular child, and is one of the biggest advantages of home education. The overall effect of moving towards a pre-planned, or a "one-size-fits-all" approach will be to restrict the opportunity for home-educated children to receive an education that is individually suited to them, and therefore superior to anything that schools could ever hope to achieve.

School premises (which are public buildings) need to be inspected to ensure that they comply with acceptable levels, but attempts to suggest that EHE "premises" (i.e. homes, and therefore private dwellings) should also be inspected contravenes Article 8 of the European Convention of Human Rights. It also demonstrates a lack of understanding that a variety of locations will regularly form part of the learning environment for most EHE children.

Attempts to routinely require parents to demonstrate the suitability of the education they provide, reverses the burden of proof, and assumes parents to be guilty of not providing a suitable education unless they prove otherwise. A comparison might be to expect all vegetarian parents to routinely and regularly provide meal plans for approval, and evidence that their child(ren) adhere to these, understand the nutritional elements of each meal, and have been tested for vitamin and mineral levels, despite the lack of any evidence that vegetarian children receive inadequate nutrition.

Existing laws and guidelines already provide for Local Authority intervention in those cases where there is evidence of concerns regarding either education or welfare, and attempts to routinely check and monitor all EHE parents and children contravenes existing law, is discriminatory and is not backed up by evidence. It wastes resources, and diverts valuable staff time away from those cases that genuinely require attention. Since most cases of serious abuse occur before the age of 5, suggestions that EHE children are more vulnerable to abuse because of not being “visible” in school, would also therefore apply to all pre-school children. Any suggestion of a need to “see” EHE children in order to ensure they are “safe and well” would therefore equally apply to all children, and is deeply offensive to most parents, as it assumes that abuse is happening unless “proven” otherwise. Given that most cases of serious abuse involve children already known to Social services, this would again waste resources, and divert valuable staff time away from those cases that genuinely require attention. Reviews of such cases unanimously blame a lack of adequate communication / action within existing procedures for failures, rather than a lack of powers to conduct “spot checks” or to compel children to attend school.

There is an important distinction between the rights of children to express their views about their educational provision, and LA attempts to seek out the views of a particular child, for example by imposing an interview or similar situation on an individual child. There are no circumstances where the law allows for children to be interviewed against the wishes of themselves and / or their parents, except in the case of evidence of wrongdoing. Attempting such an interview without evidence of wrongdoing would almost certainly contravene the child’s human rights. Again, the focussing of resources on the minority of children who are home educated makes no sense when there is no evidence that EHE children are dissatisfied with their education. School children, on the other hand are generally quite vocal about their many complaints about the education they receive, or their treatment by either other children or teachers, and the equivalent resources applied meaningfully within schools would clearly be much more easily justified. The statistics of children being harmed, physically, mentally and emotionally, and those who resort to self-harm or even suicide because of bullying at school (from either peers or teachers) are frightening, and surely a more compelling focus for improving safeguarding of children. It is often exactly because of direct experience of this kind of treatment within school that many children are removed from school.

Where an existing situation in a school means that the parent considers their child is either not safe, or not receiving a suitable education, they have a legal duty to withdraw their child and resume responsibility for educational provision, whether directly or through some other provider. Where there is a sense of urgency about this, the needs of the child will be best met by allowing sufficient time for the child and their parents to recover and adjust, and to make an informed and sustainable decision about future educational provision.

Unless there are specific concerns that a suitable education is not being provided, then there is no legal right or responsibility for any contact from the local authority, in much the same way as social services are only involved where there are specific concerns, and parents are otherwise assumed and trusted to be doing an adequate job. EHE parents do not have to comply with LA policies that exceed the law – e.g. home visits, requests for details of educational provision etc without notification of specific grounds for concern.

Discussion of these points has been included to address the alarming decrease in awareness, amongst both LAs and parents, about existing law and good practice, and the principles that underpin these. Establishing a more cohesive and respectful approach to EHE provision will prevent resources being drawn away from children who genuinely need intervention, and enable children to continue to benefit from home education unhindered by discrimination and unnecessary bureaucracy.