



Relevant Law

Right to Education

Article 2 of Protocol 1 of the European Convention on Human Rights

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions

Article 28 of the UNHCR – UN Convention on the Rights of the Child

States Parties recognize the right of the child to education.....

This is the universal right to education (note that English Law denies this right to children in the secure state - section 562 Education Act 1996)

Parents' Duty to Educate

Education Act 1996 - Section 7

The parent of every child of school age shall cause him to receive efficient full-time education for him 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.*

This means that education is the PARENTS' responsibility. They can directly fulfil this responsibility OR delegate it to the LA.

In law school is NOT the default.....i.e. **School and Home Education have equal weight in law.**

Article 29 of the UNHCR – UN Convention on the Rights of the Child

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

2.. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.



Suitable education

This has been defined by case law as:

1. to prepare the children for life in modern civilised society; and
2. to enable them to achieve their full potential

Harrison & Harrison vs. Stevenson 1981

[an education that] 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.

R v Sec of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust 1985
(Times 12th April 1985)

Principle of Parental Choice

Education Act 1996 - Section 9

In the exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, local education authorities and the funding authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

Although this part of law is often cited it should be noted it does not in reality apply to Home Education as it refers to "pupils", which Home Educated children are not as they are not enrolled at a school.

The Child's Voice

Article 12 of the UNHCR – UN Convention on the Rights of the Child

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Children Act 2004 Section 53

This sets out the duty on local authorities to, where reasonably practicable, take into account the child's wishes and feelings with regard to the provision of services. "Section 53 does not extend local authorities' functions. It does not, for example, place an obligation on local authorities to ascertain the child's wishes about elective home education as it is not a service provided by the local authority." - 2007 Elective Home Education Guidelines for Local Authorities, DCSF

The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child. The parent CAN and should USUALLY be the person representing the child in this regard – it is not expected that a child should ever be questioned by authorities unless that child is willing or there is suspicion of serious welfare issues /



unlawful activity which could endanger the child. Such questioning of course comes outside of the remit of "education" and so would only occur after a welfare related referral.

So, in brief as regards home education, it is the PARENT'S responsibility to take into account the child's views.

Local Authority's Duty to Intervene

Education Act 1996 - Section 437(1)

If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.

"Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis." 2007 Elective Home Education Guidelines for Local Authorities, DCSF
However LAs can intervene if they have good reason to believe that parents are not providing a suitable education

"Section 437(2) of the Act provides that the period shall not be less than 15 days beginning with the day on which the notice is served.

Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing. Such a request is not the same as a notice under section 437(1), and is not necessarily a precursor for formal procedures. Parents are under no duty to respond to such enquiries, but it would be sensible for them to do so". 2007 Elective Home Education Guidelines for Local Authorities, DCSF and case law Phillips v Brown (1980)

SAO Procedure

Education Act 1996 - Section 437(3)

If –

(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.

"A school attendance order should be served after all reasonable steps have been taken to try to resolve the situation. At any stage following the issue of the Order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the Order revoked. If the local authority refuses to revoke the Order, parents can choose to refer the matter to the Secretary of State. If the local authority prosecutes the parents for not complying with the Order, then it will be for a court to decide whether or not the education being provided is suitable and efficient. The court can revoke the Order if it is satisfied that the parent is fulfilling his or her duty. It can also revoke the Order where it imposes an education supervision order." - 2007 Elective Home Education Guidelines for Local Authorities, DCSF



Duty to Identify Children Missing Education

436A of the Education Act 1996 inserted by the Education and Inspections Act 2006

“Children not receiving suitable education”

(436A in this Act) Duty to make arrangements to identify children not receiving education

(1) A local education 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) In exercising their functions under this section a local education authority must have regard to any guidance given from time to time by the Secretary of State.

(3) In this Chapter, “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.”

Local authorities have a statutory duty to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than being at school (for example, at home, privately, or in alternative provision).

The guidance issued (*Statutory Guidance for Local Authorities in England to Identify Children not Receiving Education*) makes it clear that the duty does not apply to children who are being educated at home

Database of All Children – The Children’s Index – “ContactPoint”

Children Act 2004 Section 12 and Information Database (England) Regulations 2007

In summary this is the intention to cause Children’s Services to create a database of all children – now called ContactPoint - in the Authority and to include details of each child’s personal information, education provision, healthcare etc along with any concerns there are about the child. ContactPoint is the file-front that serves the whole range of agencies that may be involved with a child. (It is due for deployment, initially to the “Early Adopter” local authorities in the North-West of England in September/October 2008, and to all other local authorities and national partners between January and May 2009.) It is intended to provide a complete directory of all children from birth, together with a list of the agencies with which s/he is in contact. It doesn’t hold any case records (only basic demographic and contact information including the place where the child is educated) but should enable practitioners to identify and contact one another easily and quickly, so they can, where appropriate, provide a coordinated response to a child’s needs.

Child Welfare

Children Act 2004 Section 10

This sets out a statutory framework for cooperation arrangements to be made by local authorities with a view to improving the well-being of children in their area.

Education Act 2002 – Section 175(1)

A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children

This does not extend local authorities’ functions. eg It does not give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education. There is no requirement to *ACTIVELY* monitor welfare, only to be aware of safeguarding and promoting the welfare of children in the course of carrying out existing statutory functions.



Children Act 2004 Section 11

This sets out the arrangements to safeguard and promote the welfare of children. However, this section does not place any additional duties or responsibilities on local authorities over and above section 175(1) of the Education Act 2002.

See Statutory Guidance on *Making Arrangements to Safeguard and Promote the Welfare of Children* updated April 2007

The powers above allow local authorities to insist on seeing children in order to enquire about their welfare where there are grounds for concern (sections 17 and 47 of the Children Act 1989)

The fact that a family home educates is NOT a ground for concern.

Deletion from School Register

Education (Pupil Registration) (England) Regulations 2006

8.(1) a pupil of compulsory school age shall be deleted from the admission register—
(d) ...[when]..... he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school

12. (3) As to the contents of the admission register comprising particulars relating to a pupil whose name is to be deleted in accordance with regulation 8(1)(d),, the proprietor shall make a return to the local authority for every such pupil giving the full name of the pupil, the address of any parent with whom the pupil normally resides and the ground upon which their name is to be deleted from the admission register as soon as the ground for deletion is met in relation to that pupil, and in any event no later than deleting the pupil's name from the register.

The guidance which accompanies the regulations says that schools should inform their local authority as soon as they become aware of the deletion along with a minimum delay of a two working days before the deletion is made. Once the authority has had reasonable time to receive the notice, the school will make the deletion.

It should be noted that this is not preventing the deletion and the pupil cannot be prevented from ceasing to attend the school from the date given by the parent even if this does not give any notice.