

Registering and monitoring home-based education

Consultation response form

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Organisation (if applicable): Education Otherwise Association Ltd. Registered Charity No. 1055120 A company limited by guarantee and registered in England and Wales, No.01917107

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Responses should be returned by 23 November 2012 to:

Pupil Wellbeing Branch
Support for Learners Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: WELLBEINGshare@wales.gsi.gov.uk (please enter elective home education consultation in the subject matter box).

Please tick the box that best describes you as a respondent

- | | |
|--|---|
| <input type="checkbox"/> Home educated child/young person | <input type="checkbox"/> Home educating parent |
| <input type="checkbox"/> Local authority | <input checked="" type="checkbox"/> Organisation representing home educating families |
| <input type="checkbox"/> Other organisation with responsibility for children (please specify in box below) | <input type="checkbox"/> Other (please specify in box below) |

Please specify:

About this consultation

The purpose of this consultation is to seek the views on the Welsh Government's proposals for the introduction of a compulsory registration and monitoring system for home educated children. This document asks questions relating to specific aspects of the proposals.

Question 1 – Do you agree that a register should be kept and that it should be a requirement to register if a parent elects to home educate?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

Please enter here:..... DISAGREE

The s436A duty referred to in the consultation document is '...to identify **(so far as it is possible to do so)** children who are not registered at school **and** are not receiving a suitable education...'. However, there is no legal requirement on the parent to tell a local authority (LA) that their child is receiving education **in school** (whether state or private), therefore to impose such a requirement on parents who have chosen to provide their children with of home education would be discriminatory.

We believe that there is a mismatch between primary legislation (s436A, which, does not require LAs to take any further action with regard to children who are EHE) and Directions issued by WAG instructing LAs to collate information for the Wales statistics on all children who are EOTAS (Educated Other Than At School) at LA expense. These Directions say:

Elective home education

35. ... **Although there is no legal basis upon which authorities can collect personal data about pupils educated at home by parents** i.e. not paid for by the authority, LAs are expected to be aware of such pupils, especially where a parent has given notice to a school that a parent is withdrawing the pupil from school to educate the pupil at home.

[<http://wales.gov.uk/topics/educationandskills/schoolshome/schooldata/ims/datacollections/eotaspupillvcollection/?lang=en>]

Whilst those directions do not come under statutory guidance, in effect they create tertiary level legislation, which LAs are obliged to follow. It would appear that the purpose of these records is to fulfil the requirement to trace all children who are missing education. EHE children, by definition, are not missing education. However, it is regarded as essential to know if a child is EHE in order to know that s/he is not missing education. Hence, although LAs have no legal powers to collect information on EHE children, they are being instructed to provide this data in order to demonstrate that such children are not EOTAS.

We believe this situation to be creating confusion regarding the duties of LAs with regard to EHE children, and would suggest that a more appropriate response to the situation would be to revise the Directions.

Question 2 – Do you agree that if a parent fails to register or provides inadequate or false information then the child being home educated should be required to attend school?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

Please enter here:..... DISAGREE

This question assumes that compulsory registration is a foregone conclusion, and refers to three different scenarios. It is therefore impossible to give a single answer.

1. Registration

EO trustees are strongly opposed to the introduction of a compulsory register, which we view as unnecessary, intrusive and adversarial. We therefore disagree with the imposition of any sanction upon families where parents do not register their children as home educated.

Additionally, in many cases, children are withdrawn from school due to unresolved problems at school (bullying, their needs not being adequately met, etc.) therefore, compelling a child to attend school would be a punishment on the CHILD – who has no control over the situation. This would also conflict with the legal requirement on parents to ensure that their children receive an education ‘suitable to the child’s age, aptitude, ability and any special educational needs (SEN) they may have’ [Section 7 of the Education Act 1996] and could compromise the child’s personal safety. LAs would therefore be failing in their Safeguarding Children duties as well as those related to provision of school education services.

2. Providing inadequate information

The consultation document states:

- 3. The Welsh Government underpinned the section 436A duty with statutory guidance for LAs to help prevent children and young people from missing education [3]. The guidance issued in 2010 provides advice, makes recommendations as to how to meet and embed standards, and **reflects practices that have already been demonstrated as being effective.**
 [3] www.wales.gov.uk/topics/educationandskills/publications/guidance/missingeducation/?lang=en

The legislation relating to children missing education specifically states that it is not applicable to those who are being home educated, since their parents have elected

to retain this responsibility rather than delegate it to schools. S436A does not confer any additional powers or duties on LAs with regard to electively home educated children.

However, since the Welsh Assembly Government has issued this guidance, we would like to emphasise the following sections, which detail some of the recommendations referred to:

7.33 ... Case law has established that a local authority may make informal enquiries of parents who are educating their children at home to establish that a suitable education is being provided.

7.34 Education authorities should seek to build effective relationships and regular contact with home educators that function to safeguard the educational interests and welfare of children and young people. Doing so will provide parents with access to any support that is available and allow authorities to understand the parents' educational provision. A positive relationship will also provide a sound basis if the child or young person, at some point in the future, returns to mainstream education or if the authority is required to investigate assertions from any source that an efficient education is not being provided.

So, rather than adopting an adversarial approach (as indicated by the proposals) the **WAG's own guidance** would suggest that it would be more appropriate for LAs to establish positive relationships with home educating families. This has been shown to be most effective where LA officials work within the existing law and guidance, and demonstrate to HEs that they respect their choices. There are a number of services and resources that LAs might provide to home educating families, on an 'opt in' basis, such as access to examinations, library services, sports facilities, etc. on the same basis as these are provided to schools, which could well result in more EHE families making contact with their LAs. This would be entirely in line with the guidance quoted.

The case law regarding informal enquiries provides ample opportunity for fulfilling the legal duties of LAs with regard to home educated children. We would urge the WAG to ensure that LAs are fully conversant with the relevant existing law and guidance, and to apply these appropriately.

3. Providing false information

We assume this relates to concerns the LA might have regarding the parent's response to informal enquiries about the home education being provided. In that case, it would be more appropriate for LAs to request further specific information from the parent and, if concerns remained, to use existing legal processes, e.g. to seek a School Attendance Order. There is no need for additional legislation to cover this situation.

Question 3 – Do you agree that home educating parents should engage with their local authority to enable them to assess the suitability of their home education provision?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

Please enter here:..... DISAGREE

This question would probably not arise if LA officials with responsibility for communication with home educating families were fully conversant with existing law and guidelines, and of the wide variety of educational philosophies and practice possible within a framework of home-based education, and approached home educating families in a spirit of understanding and respect. In many cases, it is the absence of these qualities that has led to reluctance on the part of home educating parents to engage with their LAs.

We recommend that the WAG should encourage all LAs to learn from existing good practice from those few LAs where relations with home educators are largely positive, and to adapt their own procedures accordingly, if they wish to increase engagement with home educating families.

As regards the suitability of home education provision, numerous home education organisations and individuals have suggested to LAs for many years that, as well as acting within the existing legal framework and guidance, they should consult with home educators themselves as to the aims, practices and outcomes of a suitable education. There are also a number of academic studies, by highly qualified, independent, education experts (with respect, we do not mean LA staff, EWOs or schoolteachers) as to the variety and effectiveness of home education provision. That is in addition to a substantial body of anecdotal evidence (as can be gleaned from home education local and internet-based groups) demonstrating the success of home-based education in preparing young people for adult life and in enabling them to fulfil their potential.

On the other hand, there have been many reports, particularly in recent years, as to the inadequacies of school education – which is, at base, the responsibility of LAs. A large proportion of EHE children have been withdrawn from school because their educational needs were not being addressed there. To suggest, therefore, that LA staff in general are better qualified to assess the education provided by parents who elect not to delegate this duty to schools, is – from the point of view of those parents – to add insult to injury.

EO trustees would urge the WAG to instruct LAs to ensure that all officers who have dealings with EHE families receive appropriate training. There are a number of sources offering this formally (for a fee) and it has also been shown that where an LA approaches local EHE families with an open mind, and shows willingness to respect their views, to understand their practices, and to learn from their experience, a relationship of mutual trust can be developed. That so few LAs avail themselves of this opportunity for free guidance is a matter for regret amongst EHE families and HE organisations.

Question 4 – Do you agree that the initial meeting between the local authority and home educating parent and child should take place in the main location where the education is being provided?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

<p>Please enter here:..... DISAGREE</p> <p>Again, this question assumes that compulsory registration is a foregone conclusion, and we dispute that it is either necessary or desirable.</p> <p>The question also assumes that an initial meeting is compulsory. There is no legal requirement for meetings between LA and home educating parents, and certainly not the child. To impose such a requirement would be adversarial, at the least. At worst, for example with a child who has suffered a traumatic experience at school or with other authority figures, it could be the cause of extreme distress.</p> <p>Paragraph 18 of the proposal refers to the United Nations Convention on the Rights of the Child (UNHCR), giving this as a reason for organising workshops for young people regarding the proposals. These have not provided a proper forum for discussion, in that they employed similarly leading and ambiguous questions, based on an initial assumption that compulsory registration and monitoring (including compulsory access to the child in their own home) are a foregone conclusion. We would refer the WAG to the provisions of Article 16 of that Convention, which states:</p> <ol style="list-style-type: none"> 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks. <p><small>[http://www2.ohchr.org/english/law/crc.htm - Convention on the Rights of the Child]</small></p> <p>EO trustees contend that the proposed monitoring arrangements would constitute arbitrary interference with the child’s privacy. At present, children (and others) do have the protection of the law against such interference, in that even the police need to seek a warrant for entry to the home. The proposals would negate that protection, and would therefore be in contravention of Article 16 the UNHCR</p>

Question 5 – How often should the annual monitoring meetings with both the home educator and the home educated child take place at the main location of education?

Always	<input type="checkbox"/>	Every two years	<input type="checkbox"/>	Every three years	<input type="checkbox"/>
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Up to five years	<input type="checkbox"/>	Never	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

<p>Please enter here:..... NEVER</p> <p>The question assumes that annual monitoring meetings are taken for granted. To make monitoring meetings (whether annual or otherwise, and wherever they might occur) a compulsory requirement, would be more likely to be damaging rather than helpful to relationships between LA staff and home educating families.</p> <p>Please see comment re UNHCR in reply to Q.4 above.</p>
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Question 6 – Do you agree that registration should be denied or revoked in the limited set of circumstances set out in the consultation document?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

<p>Please enter here:..... DISAGREE</p> <p>This is tantamount to saying that parents must ask permission to home educate (which is not the case in law); and again, the question assumes that compulsory registration is a foregone conclusion. The ‘very limited set of circumstances’ are therefore irrelevant. However, to take them individually:</p> <ul style="list-style-type: none"> • if the parent fails to satisfy the LA that they are fulfilling their duty under section 7 of the Education Act 1996 <p>It is difficult to see how a parent could demonstrate that this duty was being fulfilled, if they were denied the opportunity to put it into practice. Existing law is clear that a parent does not need to seek permission to home educate. In addition, the Guidance relating to Children Missing Education (which guidance is referred to in the WAG proposal, and which strictly speaking does not apply to EHE) states:</p> <p>7.27 Parents do not need to seek permission from the LEA to begin home education, but must notify the governing body of the school; usually through the head teacher to ensure that their child’s name is removed from the school admissions register. However, if a child has never attended school, no permission or notification is required.”</p> <p>Hence, if LAs must have regard to the guidance (as stated in the proposal), logically they cannot insist on notification (of children who have never been registered at school) or permission to HE. Such children are not, in any case, ‘missing education’ since they are receiving education otherwise than at school.</p>
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- if the LA becomes aware of new or existing welfare or safeguarding issues that affect the suitability and effectiveness of the education provided

Welfare and safeguarding issues may also arise with regard to children below compulsory education age, and also children who attend school – which after all is only for part of weekdays during term time. Such concerns are the remit of Social Services, who have appropriate responsibilities and powers to investigate and deal with them. Home education *per se* has no bearing on such issues.

- if the parent fails to cooperate with monitoring and/or reasonable requests to monitor.

Again, this statement assumes that compulsory monitoring is a foregone conclusion, which it is not. As stated previously, case law has established that LAs may make informal enquiries as to home education provision, and legal processes already in existence provide a means whereby further action may be taken if appropriate.

Question 7 – Do you agree the amount of time taken between receipt of application to register and notification of registration outcome should be no more than 12 weeks?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Comments:

Please enter here:..... DISAGREE

Another question that assumes the existence of compulsory registration and, by implication, permission to withdraw a child from school for home education. Even if this were the case, to impose a delay of almost a whole school term would be unacceptable. At best, this could delay the start of an effective education being provided for the child (e.g. where particular aptitudes or needs were not adequately met by school); at worst, the stress of being forced to continue in a traumatic situation (e.g. where school was unable to prevent bullying) could put the child at risk of physical or emotional harm. In the extreme, this could lead to self-harm or even suicide.

The present situation, where the child may be immediately withdrawn from school if necessary (e.g. for their physical, emotional or educational well-being) is the only way to be sure that the child's best interests are secured. The duty of the parent to notify the school of commencement of home education, and of the school to notify the LA of immediate removal of the child's name from the school register, is sufficient and fit for purpose if applied correctly by the authorities.

Question 8 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Comments:

Please enter here:.....

A. Separate consultation on suitability of education (Para. 16 of consultation document)

Since EHE is not required in law to conform to any particular description of a ‘suitable education’ it would seem superfluous – if not downright arrogant – on the part of LAs who have shown such reluctance to appreciate the value of an individually-tailored learning experience provided by parents who are in day-to-day contact with their children and therefore exceptionally well placed to recognise their educational needs, to suggest that any ‘tick-list’ in the hands of an ill-informed official could be effective in ensuring ‘suitability’.

However, if the intention is to engage in meaningful dialogue (unaccompanied by compulsion of any sort) with home educating families, regarding the aims of education and the various ways of achieving suitable outcomes, then we would welcome this consultation. We doubt, however, that it would prove possible to create a simplified list of expectations, such as seems to be the objective.

B. Developing training for LAs (Para 17 of consultation document)

It is heartening to hear that

... training will seek to ensure that those undertaking it gain a full understanding that home education can be significantly different from school-based education and depending on the circumstances, it may be equally effective if not more effective in meeting the learning needs of the child.

This is something that Education Otherwise, and indeed generations of home educators, have been saying for many years. It is needed **NOW**, not following a further consultation, let alone a compulsory registration scheme. If it had been implemented when the need was first recognised (say, about half a century ago) or at any time since, then it is likely that EHERs would be less suspicious of the motives behind the current proposals. Even now, if more LAs would make genuine efforts to consult and learn from the real experts on home education – i.e. home educating groups and families themselves – it is probable that this would be welcomed. This would be a way of providing very effective training at virtually no cost to LAs.

However, even were all LA officials to be fully conversant with all the matters of concern to home educators, it is unlikely that a compulsory registration scheme would be acceptable.

C. Conflation of Welfare and Education issues

Throughout the proposal document the WAG appear to confuse the issues of welfare and education. Yet the 2010 Guidelines clearly state that these are two different issues:

6. Child welfare

6.1 As stated earlier, a parent's decision to home educate is not in itself grounds for concern about the welfare of children. However, as with school educated children, child welfare issues may arise in relation to home-educated children. If any child welfare concerns come to light in the course of engagement with children and families, these concerns should immediately be referred to the statutory authorities for consideration. The local education authority's nominated child protection officer can provide more detailed advice on the local protocols and procedures in place.

I.e. The WAG's own guidelines accept that home education and welfare concerns are separate, and that there are existing procedures to deal with welfare concerns. There would therefore seem to be no reason for not making a clear distinction between the two areas, to the benefit of those children who at present fall through the welfare net despite repeated referrals from school and other authorities. It seems bizarre that statistical evidence shows that while home educated children are considerably more likely to be reported to their Social Services department than schooled children or those under 5 year old, they are considerably LESS likely to be found to require registration on a Child Protection register. It thus appears that LAs are disregarding the WAGs own guidance. It is hard to see in what way compulsory registration would contribute to an improvement in welfare of home educated children.

D. Further comment on certain aspects of the process of the consultation itself

It does not appear that the Welsh Assembly Government has made sufficient effort to alert all families affected by this consultation to the fact that it was taking place.

- (i) The EHE consultation is not listed on the home page of the WAG website. To find it, one has to click on 'more education and skills open consultations' below the main list – on which most of those listed have later closing dates than this consultation. This appears to be a deliberate attempt to reduce the likelihood of anyone not very familiar with internet technology to find it.
- (ii) We appreciate that it would have been impossible to notify EHE families who are not known to the authorities of the consultation, but we understand that notification was not even sent to all those who ARE known to their LAs. Again, this looks as if the intention was to disenfranchise a large proportion of those affected by the proposals; significantly, those who are more likely to be strongly opposed to compulsory registration and monitoring.

- (iii) A further opportunity to create wide awareness that could have been taken, but apparently was not, would have been to notify Home Education Organisations such as ourselves that the consultation was imminent. This could have provided a further avenue of information to interested parties, and could have been done by a quick internet search and messages sent via website contact systems.
- (iv) The questions themselves, both in this document and in the Workshops for Young People, are poorly formulated, often ambiguous, and worded so as to conform to a preconceived outcome. This is not best practice and does not inspire confidence in the genuineness of the consultation.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

Please note that EO will be supplying a duplicate set of comments in the Welsh Language.