

WAG Draft non-statutory guidance for local authorities on elective home education

RESPONSE from Education Otherwise Trustees

DRAFT 5 (Final)– 29/6/15

Q 1: Do you feel that the guidance provides sufficient assistance for local authorities to support home educating families?

NO

The new draft is less clear than the existing 2006-2008 guidance. It does not address the areas where that guidance needed improvement and clarification of some specific points of legislation, but brings in additional issues – not all of which are relevant to home education. This will only confuse the situation further, and is likely to lead to deterioration of relationships between LAs and home educating families.

Since the draft is stated to be guidance for Local Authorities it should be written in a concise style and the main body should be focussed on legislation specific to EHE. It is written in an informal style that is not suited to professional practice.

Intrusion of collaborative practice examples within the main text is distracting; these would be more appropriately covered as appendices, which would clarify the distinction between legal aspects and additional provision.

Q 2: Is there anything missing from the guidance which you think should be included, if so please specify?

YES

The 2006/8 guidance stated (3.8) that ‘there is no legal framework for the L(E)A to monitor provision of home education. Since there has been no change in the law, this should still be included. The draft does not take into consideration the *ultra vires* nature of routinely monitoring home educators, nor does it give due regard to privacy and family life as enshrined under Article 8 of the Human Rights Act 1998.

There should also be a statement to acknowledge that there is an assumption that the education is ‘suitable’ in the absence of any reasonable indication to the contrary, **and that it is the parent’s duty to ensure the provision of a suitable education; not that of the LA.**

There should be a clear statement **that**, where an LA makes initial enquiries (e.g. on being notified that a child has been withdrawn from school and is being home educated) there is no requirement for a meeting either in the home or elsewhere, and that parents may demonstrate that they are fulfilling their S7 duties in a variety of **alternative (not additional) ways**, e.g. a written report, etc. but that even this is voluntary and not a legal requirement.

What is needed to achieve the stated aim ‘*to encourage more consistent approaches to EHE across Wales*’ (1.1) is a clearer and more authoritative statement of the legal position, that addresses the areas where misrepresentation/misinterpretation of the law has led to variation in practice between different LAs.

Q 3: Does the guidance clearly outline the legal position of elective home education in Wales?

NO

If the stated aim ‘*...to encourage more consistent approaches to EHE across Wales. (1.1)*’ is to be achieved, it is essential that the guidance should be clear, concise and factually correct. This draft is less clear than the guidance it is intended to replace and is inaccurate on several points:

Section 2. The reference to LA duty to identify children not receiving education under S436A of the Education Act 1996 is misleading because it is incomplete in quoting only paras (1) & (3). It should also quote para (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.*

The relevant guidance here would be Welsh Assembly Government Circular No: 006/2010 – **Statutory guidance** to help prevent children and young people from missing education, which states:

1.20 *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)...*

1.22 *The duty does not apply to children and young people whose parents have chosen to electively home educate them.*

The CME statutory guidance imposes no requirement to assess the suitability of the education.

The current draft is stated to be non-statutory, and therefore cannot supersede the relevant existing legislation and statutory guidance.

Other non-statutory guidance regarding attendance is also relevant: An operating toolkit for the Education Welfare Service (08/03/2011) which refers to Children Missing Education (Part 4, section c.) and confirms this duty does not apply to EHE: 258. *The duty does not apply to children who are being educated at home. Parents have a duty to ensure that their children receive a suitable full-time education either by regular school attendance at school or otherwise (under section 7 of the Education Act 1996) or they may choose, as is their right, to provide this by educating their child at home.*

Section 2.1

There is no legal requirement for LAs to 'keep track of ... children'.

It is the duty of the school, not of the parent, to ensure removal of a child's name from the school roll.. The parent has only to notify the school in writing that the child is receiving home-based education.

UNHCR Article 12 assures the child the right to express his or her own views, and for those views to be '*...given due weight in accordance with the age and maturity of the child.*' This is a subtle difference from the rewording in the current draft, and does NOT confer a right '*to have their opinions taken into account.*' The rights of the child are not in conflict with the duties of the parent. This is made clear by Article 5: '*States Parties shall respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*'

Section 3.2

The reasons for a family choosing to home educate are not relevant to LAs, and no legislation that provides for this. LAs are only required to respect that choice; further investigation would be an invasion of the family's privacy.

Section 3.3

The suggestion that: '*Working on a regional basis, consortia could formulate their own regional responses to EHE tailored to the communities within their area, working with partners on a regional level*' is contradictory to the aim expressed in the last para of 3.2: '*It is important to establish a consistent approach towards home educators across Wales*'. Legislation and guidance do not differ from region to region, and their application should be rigorous in order to achieve consistency. Informal collaboration with regard to local demographics, resources, etc. should be clearly separated (e.g. in an appendix).

Section 4 – Reviewing Provision

This repeats the misinterpretation of S436A of the Education Act 1996 and presents a strong assumption of a duty to assess and monitor home education, which is not supported by existing legislation or guidance. It also refers to 'evidence' which is a term applicable to legal proceedings (e.g. if a S.A.O. were being considered) and not appropriate to any informal enquiries (initial or subsequent) that a LA might make, and which might be satisfied in a number of different (and less formal) ways. It also strongly suggests that a meeting is obligatory, which it is not. Nor is there any legal basis for observing education, or for speaking to children regarding their home education. As stated in UNHCR Article 5, it is the duty of the parent to give '*appropriate direction and guidance*' to the child. There is no legal basis for this duty to be assumed by the LA.

It is possible that unless rewritten in light of the above, the proposed draft guidance could render LA employees who follow it liable to private prosecution.

Section 5 – Child Welfare

'It is of great concern to many local authority officers with responsibility for overseeing EHE that there are some children and young people living within their local authority area that they are either unaware of, or have been unable to see... Tracing children and ensuring that they are safe is a real challenge for local authorities... It is the lack of visibility of some EHE children that often concerns many local officers that support the EHE community.'

Local Authorities have no proactive duty to ensure that children are safe, whether they be school or home educated, nor to 'see' or to 'trace' children. It is the responsibility of parents to ensure their children's safety and general welfare. In the absence of any indication to the contrary, the assumption should be that parents are fulfilling their role in a loving and responsible manner. EHE children are in any case generally more 'visible' than schooled children, since they are likely to be out and about in their local neighbourhoods, in shops, libraries, museums, clubs, parks, etc. for more of the day.

Home educating is not a safeguarding issue and to conflate the two by requiring that a child be seen by 'professionals' is neither lawful nor appropriate, and is misleading for professionals who may read this document and come to believe, erroneously, that home education is a safeguarding issue and that they possess powers which they do not have. This would be detrimental to goodwill between LAs and home educators.

This section again misrepresents the legislation regarding identifying children who are not receiving a suitable education – as stated above, there is no such duty on LAs either in S436A of EA 1996 or elsewhere.

Section 5.2 – Truancy Sweeps

There is no legal basis for the statement that *'Home educating parents need to be made aware that professionals involved in truancy sweeps may need to verify any information given to them in these circumstances.'* The fact of being home educated is not an offence, and neither the police nor LA officials have any legal authority to require verification.

Q4: Does the guidance clearly outline the responsibilities of local authorities in relation to elective home education?

NO

The existing guidance from 2006/8 is not perfect and LAs often do not adhere to it fully; nevertheless, it is in general clear and well presented. The stated intention of this draft was to clarify the legal situation, but we consider that it would have the opposite effect. What was required, we consider, was a supplementary document focussing solely on those areas of law where differences of interpretation had been identified by the recent consultation process. This document sadly misses the mark.

As a charity supporting home educators throughout Wales (and England) Education Otherwise volunteers frequently hear of LAs exceeding their legal remit, particularly with regard to assessment and monitoring of home education. This can cause significant breakdown in relationships between LAs and home educating families, and lead to destructive and expensive legal challenges, to say nothing of the unnecessary distress and intrusion caused to those families.

We have detailed some legal inaccuracies above; but there seems to be a general tendency to imply greater flexibility in interpretation of the law than in the existing guidelines, which can only lead to more diverse practices between LAs – i.e. increase the 'postcode lottery' in their attitudes to EHE. This lack of consistency would, we consider, result in increasing conflict between home educating families and local authorities.

Q 5: 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.

The questions do not seem to be closely related to the issues raised in the document itself. The general tone of the draft is patronising towards home educating families, and shows a strong bias towards schooling – more so than the 2006/8 guidelines.

The comments on the value of EHE are especially patronising – the draft refers (1.2) to ***‘The belief of some EHE families that the flexibility and tailoring of approach is more meaningful to the child ...’*** whereas this is a well-established view amongst respected professionals in education. The advantage of home-based education being that with increased personal interaction the aim of an ‘individual education plan’ can be much more effectively realised than within a school setting.

On the other hand, the Welsh Government’s ***belief*** (1.1) *‘that all children ... are able to realise their potential with the assistance and support of high quality schools ...’* is clearly inaccurate – since an increasing number of parents are opting to provide a home-based education precisely because, for whatever reason, their children are **unable** to realise their potential at school.

While it is a good idea to give examples of local authority practices, and the suggestion of informal collaboration with local home educators with regard to local support, resources, etc. is laudable, these aspects of the draft would be better presented in the form of appendices. Its inclusion in the main text overshadows and blurs the underlying issue that in exercising their official functions LAs should act entirely within the existing legislation and guidance in order to avoid a ‘postcode lottery’ of practice. The 2006/8 guidelines were clearer in this respect.

In addition, the assumption that all local home educators will wish to be part of a particular local group is unwarranted, due to the variety of lifestyles, philosophies, etc. within the EHE ‘community’.

The implication that EHE children are in need of LA intervention to provide, for example *‘...a special pre-Christmas event included a visit to the local zoo for the ‘children who wouldn’t get a school trip’.* Is insulting to EHE families, whose children often enjoy many more trips – both educational and recreational – than do school children.

The whole of Section 3.1 ‘Early intervention and conflict resolution’ is related to resolving of problems with provision of education within schools; it has no place in a document about elective home education. 2006/8 guidance had a clear and concise statement (1.5) ‘When a parent offers an account of dissatisfaction with the public system of education provision, the education authority may wish to use this information as part of its ongoing review of its provision.’

There are a number of typographical/grammatical errors in the draft, and paragraph numbering is inadequate.

We are aware that a number of HERs in the area are reluctant to respond in case their personal details are inadvertently leaked, as happened on some previous occasions. This present consultation therefore has an inherent flaw, in that the views of home educators are likely to be under-represented.

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