

GUIDANCE ON THE CIRCUMSTANCES IN WHICH PARENTS MAY CHOOSE TO EDUCATE THEIR CHILDREN AT HOME

REVISED DRAFT GUIDANCE CONSULTATION REPORT DECEMBER 2003

Background and purpose

The Standards in Scotland's Schools etc. (Scotland) Act 2000 includes provision under Section 14 for the issuing of guidance to education authorities as to the circumstances in which parents may choose to educate their children at home.

The purpose of the guidance will be to promote a consistency of approach across the country by setting out the legislative position, and by providing advice on the roles and responsibilities of education authorities and parents in relation to children who are educated at home. Drawing upon the consultation with interested parties, the guidance will encourage effective partnership based on a shared understanding of what is expected from each of the parties involved. It is essential that education authorities and home educating parents work together to develop mutual respect, trust, and a positive relationship in the best educational interests of the child.

Draft guidance was initially issued for consultation from 20 December 2001 until 29 March 2002. Following the written consultation, the Scottish Executive met with home education organisations and individuals and with local authorities to discuss how the draft guidance should be revised in order to achieve its purpose. A report on that consultation and a revised draft of the guidance was issued for further consultation, with a closing date of 10 October 2003.

THE CONSULTATION EXERCISE

The Scottish Executive distributed the revised draft guidance to education authorities, home education organisations, other interested organisations (chiefly children's organisations), and individuals that had responded to the original consultation. The document was also published on the Scottish Executive's website. The main aim of the second consultation exercise has been to test the acceptability of the proposals within the guidance with those that the guidance will affect, and to obtain feedback that will inform the document's further development. A total of 51 written responses were received.

Consultees

The table below shows the breakdown of responses.

| INTEREST GROUP/SECTOR | INVITED | RESPONDED |
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| Scottish Education Authorities | 32 | 21 |
| Home Educating Organisations | 4 | 9 |
| Interested Individuals | 85 | 8 |
| Other Children's Organisations | 20 | 13 |

ACKNOWLEDGEMENTS

The Scottish Executive would like to acknowledge and thank the wide range of authorities, organisations, and individuals that took the time to consider the consultation document and submit their responses.

Structure of the Report

The report that follows reflects the comments made on the individual sections of the document.

General Comments

The majority of respondents welcomed the revised draft and saw it as an improvement on the previous version. Some particularly welcomed the document's recognition of home education as a positive choice in education. Several authorities and home educators believed that the revised draft was a useful and useable document on which to base a partnership. However, one or two respondents said that SEED should monitor the effectiveness of the guidance and make a commitment to review within a particular period.

However a few responses, mainly from local authorities, were of the opinion that the revised draft, although a good attempt, failed to address the anomalies of the legislation and that it was an idealistic picture which did not reflect reality. Some also considered that the revised draft did not provide enough safeguards for home educated children, both with regard to the issue of child protection and with regard to the quality assurance of the education provided. One home educating group thought that there was little in the document that would serve as a basis for partnership.

Local authorities were concerned about the resource implications of some of the issues mentioned in the guidance. One suggested that SEED should consider providing a national co-ordinator whose work would be ensure the spread of good practice and more consistent approaches across authorities.

A number of respondents commented that the legislation should be reviewed, to address the anomaly of some parents being required to seek consent to withdraw their child from school. Opinion was divided between those who thought that all parents should be required to seek consent from the local authority and those who considered that no parents should.

One local authority had consulted locally with a group of home educating parents and appropriate personnel within the Education Department and had submitted a collated response.

One or two respondents simply set out their own situation. Because of the personal nature of the comments, these responses have not been covered by this report.

We have sought to indicate where we have made any significant changes to the guidance following the consultation. Some suggestions could not be implemented without a change in legislation. Other suggestions do not affect the wording of the guidance but ask the Scottish Executive to consider a particular course of action in the future. These will be considered further by SEED.

Section 1-Introduction

There were few comments on Section 1. One authority commented that the guidance set out the legislative position, but failed to make sense of it. Another organisation believed that the omission of a reference to Section 1 of the Standards in Scotland's Schools Act 2000 meant the picture was incomplete.

We have included a reference to S1 and S2 of the 2000 Act within Section 2 of the guidance.

Section 2-Legislative Position

While most respondents thought that the information on the legislative position was clear and helpful, a number suggested additional legislation that should be included:

- Sections 1, 2 and 15 of the 2000 Act (which refer to a child's right to be provided with school education which is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential; to have their views taken into account and, if they are being provided with school education by the education authority, to have that education provided in a school other than a special school)
- Article 18 and 28 of the UN Convention on the rights of the child (which refer to children's rights to education and to protection from all forms of violence);
- Section 1 (3) of the Children (Scotland) Act 1995 (which sets out parental responsibilities towards a child).

We have updated the reference to reflect the amendments made to the Education (Scotland) Act 1980 by S1 of the 2000 Act. We would expect local authorities to have regard to other relevant legislation without it being referred to specifically within the guidance.

Concerns were expressed, particularly by some local authorities, that the guidance did not make clear what should be done when a child expressed an opinion different from that of his parent. It was suggested by one respondent that the parents' right to home educate could be made conditional upon them having taken the opinion of the child into consideration.

Two home educator responses (one organisation and one individual) suggested that there should be no conditions attached to home education-

"[it] is a right, not a privilege and is a choice equally valid to schooling....Local authorities need to bear this in mind..."

One local authority and one home education organisation also considered that the guidance should expand further on what is required of an education authority in relation to home education.

Section 3-Withdrawing a child from school

This section of the guidance brought a number of detailed comments. It was agreed by respondents that consent to withdraw should be based on what is in the best interests of the child. However, how and by whom that should be determined was not agreed. One education authority commented:

"the guidelines now seem most helpful in relation to the families for whom they are least relevant i.e. those who enter into home education in a positive and planned manner.....In [other] cases, reference to a good relationship are a bit wishful."

There were also a number of comments from respondents that the current legislation in this area is unsatisfactory in that it only requires one category of parent to seek consent from the local authority to withdraw their child from school. However, there was disagreement as to whether the legislation should be changed to require all parents to seek consent or whether it should be changed to require no parents to seek consent. One organisation thought that there should be a complete and accurate register of all children being educated at home. Another was of the opinion that failure to extend the provisions to all parents could easily lead to children slipping through the net and, in cases where the provision of home education is inadequate, to their education being severely compromised.

Home educating organisations also argued that there were other categories of parents not required to seek consent: if the child is between P7 and S1 and if the school the child had attended had closed.

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| <i>We have added these categories.</i> |
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One authority asked for further explanation of what the legislation meant by not unreasonably withholding consent. Two home educating organisations thought that the interpretation of Section 35 offered by the guidance was not in accordance with the spirit of the law and that home education should be accepted as a reasonable excuse.

Some education authorities believed that the guidance did not make clear what responsibility they have for those children whose parents are currently not required to seek consent, or when and how they were to become aware of such children.

“If the Executive were to state unequivocally.. that an education authority has no responsibility [for] these, that would at least have the advantage of being unambiguous and may relieve pressure....on authorities.”

“It is a matter of considerable concern that there may be children within this local authority area of whom we have no knowledge and therefore no locus in providing support.”

We have sought to make it clear that it is not the responsibility of the local authority to seek out such children, but, where they are drawn to the authority’s attention, the authority has a duty to ensure that they are being provided with an efficient education, suited to their age, ability and aptitude.

The issue of ensuring the child is allowed to express his or her views and who ensures the child has an opportunity to do so also prompted comment. The principle was generally welcomed, although it was suggested that offering the opportunity did not mean that the child had to take it up. However, a number of respondents considered that the wording of the section was ambiguous and it should be made clear whether it is the education authority or the parents who should seek the child’s view.

We have redrafted this section.

Some education authorities felt that advice on how to go about this would be of assistance, particularly if they did not have access to the child. The guidance also did not cover what action the education authority is expected to take if there is a disagreement between parent and child. Some also thought that there was a contradiction between this part of the guidance and the part where it stated that consent should be granted on receipt of the application.

Some respondents agreed that parents should be encouraged to share their reasons for withdrawing their child. However other respondents believed that the reasons had no bearing and that local authorities should be interested in how parents were going to provide education for their children.

The procedure suggested by the guidance for withdrawing the child from a local authority school also prompted a large number of comments. Education authorities expressed their nervousness that they could be vulnerable to litigation at a later stage, should the young person being home educated considered that the authority had not ensured the provision of adequate and efficient education. Likewise that they could be denying the child his or her rights to education by giving consent as a matter of course.

Other concerns included the fact that the guidance seemed to make the assumption that home educating parents will act in a reasonable manner when withdrawing their children from school.

Whilst accepting the need for as quick a response as possible, education authorities thought it would be very difficult to make a judgement about efficient education without some obligation on the parents to provide information.

“It is important to process any application quickly, but it is equally important to safeguard the child.”

A number of respondents wanted clarification on what constituted available information and who the education authority could consult. Authorities thought parents should be expected to provide evidence that they would be providing an efficient education and that it should be stated that it is the parents’ responsibility to provide such information, along the lines set out in Section 5.5.

“The guidelines appear lacking and unsupportive of the education authority in its capacity as an educational welfare service.”

“The powers available [to the education authority] are not commensurate with the duty”

The lack of timescales in the document were criticised by other organisations. It was suggested that it may be good practice for an education authority to give an estimated timescale for a decision to parents and children.

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| <i>We have added this to the guidance.</i> |
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There was also concern that education authorities request for more explicit guidance regarding the refusal of consent had not been addressed. One organisation suggested the following circumstances where a comprehensive assessment would be required in order to determine whether giving consent to home educate would be in the best interests of the child:

- Where a child has been referred to social work or the police for child protection reasons, pending the outcome of the investigation;
- Where a child is on the child protection register;
- Where a child has been referred to the reporter on care and protection grounds, pending the outcome of this referral;
- Where the child is the subject of a supervision requirement.

“The guidance should state that consent to home educate in these circumstances should be conditional on this both being determined as in the child’s best interests and in accordance with the child’s wishes.”

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| <i>We have amended the guidance to include the examples above.</i> |
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Home educating individuals and organisations thought that it would be useful to add that children may need time to adjust to learning at home, especially if they have had problems at school. They considered that in such circumstances, education authorities should recognise that prolonging school attendance causes unnecessary distress.

“Consent should be given immediately unless there are exceptional circumstances involving, for example, specific evidence of neglect or other serious concern.”

It was also suggested that, where consent is withheld, an independent appeal procedure should be available to parents.

We have sought to clarify that, although no independent appeal procedure is currently in place, there are other mechanisms whereby parents and others can have an education authority’s decision reviewed.

Most respondents disagreed with the paragraph suggesting that education authorities should try to ensure that they have the consent of both parents to home education, on the grounds of such actions being neither necessary nor practical. If such consent gathering is to be done at all, it should be done by the parents and not the education authority.

This section has been removed from the guidance.

Section 4-Developing Relationships

While all respondents agreed that positive relationships between local authorities and home educating parents were to be encouraged, there was disagreement on how this should be achieved.

One interested organisation commented that they

“[supported] the need for improved relationships, and [believed] that this would be better achieved if requests were not handled by committees of elected members.”

One authority reiterated their concern that the guidance did not make clear what responsibility education authorities have for those children whose parents are not required to seek consent. Other authorities believed that the guidance did not place enough responsibility on the parents of home educated children to meet the authority halfway.

“The usefulness [of the guidance] tends to apply to these families for whom it is the least relevant. For the few families whose use of the home education option is a cause for concern it is not in their interest to develop a relationship.”

Conversely one home educating organisation thought that education authorities have little to offer home educators in terms of building relationships.

Some education authorities considered that there was a contradiction between the requirement in Section 3 to grant consent to withdraw as soon as possible and the statement in 4.3 that parents should be expected to demonstrate their commitment to providing an efficient education that is suitable for their child. One interested organisation suggested that the guidance should clarify how parents should demonstrate this and perhaps provide exemplars.

One individual respondent thought that:

“[the] lax approach in this guidance is at odds with current concerns about child protection”

The commitment to provide clear, accurate information was welcomed and it was suggested that SEED could provide information at a national level which education authorities could use locally. Some home educators suggested that information on home education should be provided at the time when parents are looking to place their child in school or in situations where the child does not have a good relationship with school education.

Education authorities generally thought that the suggestions for offering support and for training officers in home education were good ideas in principle. However, most felt that they would be unable to comply with these without additional funding from the Scottish Executive. They were also concerned that the guidance would now give rise to unrealistic expectations on the part of home educating parents.

By contrast, home educating individuals and organisations wished the guidance to go further in this area, such as by allowing access to examination centres.

Respondents pointed out that there is no legal requirement for any child to take qualifications. However, the main concern to home educators was the inflexibility of the National Qualifications system. In their response the SQA stated that they were keen to support authorities which adopt differing approaches to internal assessment and continue to meet standards within quality guidelines. It was suggested that SEED should consider covering the basic costs of exams for children in the school age range.

The suggestion in 4.7 of the involvement of school staff for those children who may be returning to school was not generally welcomed.

“It does not seem appropriate to introduce a second category of home education with an expectation that a different level of support will be available to parents and children in these circumstances.”

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| <i>We have removed this suggestion from the guidance.</i> |
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The suggestion of provision of a named contact, familiar with home education practice, was well received by individual home educators, home educating organisations and some of the other organisations. It was suggested that “familiar” should be replaced by “trained” although some were concerned about how this would be achieved and who would do the training. One of these organisations again suggested that the decision should be made by such named contacts and not by local authority committee structures. Education authorities, while recognising the merit of the suggestion, were concerned about the financial implications. One rural authority felt that it would prove a significant financial burden on them to provide one named and trained person to cover a wide geographical area.

There was also disagreement here about the need for a meeting between a named contact person and the parents to discuss their proposals of provision. Some respondents thought that such a meeting should be obligatory rather than voluntary, while others considered it should not be mentioned at all.

There was some concern about the procedure of writing a report following such a meeting. These concerns related to the implication that there may be some parts of the report not shared with the parents due to Data Protection guidelines.

The suggested annual contact was of concern to a number of respondents, with some respondents feeling that this was not frequent enough and others feeling that it was too frequent. One authority made the point that, in their view, once consent to withdraw the child from school was obtained, ongoing contact cannot be maintained without the consent of the family.

“This means that the local authority has no continuing duty or power to act. All it can fall back on is Section 37. This should be made clear in the guidance.”

The paragraphs entitled Access to the Child and Home also pointed to disagreement between respondents, with some saying it was not necessary. They felt that the educational provision could be assessed in other ways and that the guidance should list some of these alternative means. Other respondents said that the efficiency of the education could not be assessed without access to the learning environment. Still others said that, although there was no legal right to have access to the child and home, nevertheless it was desirable.

The suggestion that home educating families should be involved in assisting the education authority to review its procedures and practices was generally supported. However, some respondents were not clear how this could be easily done in practice.

A number of respondents would like to see a statutory appeal procedure in relation to education authorities’ decisions on home education. Other respondents thought that information on the review systems already in place should be made clearer in education authority literature or that existing mediation services could be used.

A small number of respondents welcomed the paragraph giving information on Disclosure Scotland. However, one organisation thought that it was rather cursory and could raise more questions than it answered.

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| <p><i>This section has been expanded to cover child protection issues more generally.</i></p> |
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Section 5-Efficient and Suitable Education

In this section the issue of child protection was what prompted the most comments from education authorities and other interested organisations. They were concerned that procedures set out in the previous version of the guidance to identify home educated children had now been removed and were concerned that this also removed a degree of protection from the children.

“It would be appreciated if you could provide evidence for the statement [that] it is no more likely that child protection issues will arise in relation to home educated children than school educated children.”

One local authority maintained that

“on average, 40-50% of referrals to Social Work Services on the basis of child protection concerns come from education service staff. In contrast, referrals from members of the community account for only about 5% of referrals”

Local authorities were concerned that the guidance did not allow them to be proactive in ensuring adequate safeguards for children and did not allow them to fulfil their responsibilities in this area.

It was suggested that the guidance should contain details of protocols for referring child protection concerns.

There were also some concerns that the guidance limited the role of the education authority more generally and that there was no obligation on the part of the family to respond to correspondence

“The guidance allows the education authority to take a laissez faire approach to home education once initial procedures have been followed. Such an approach may be in line with the wishes of the parents, but is not always in the interests of the child being educated.”

Home educators were very concerned that the guidance allowed education authority officials access to the home and child. They and other respondents thought that the guidance needed to specify what constituted “exceptional circumstances.” Concerns about educational provision could be addressed by other means, such as by the parent submitting evidence in writing. Child protection and child welfare concerns should not be addressed by the education authority, but by their colleagues in Social Work Services. They also considered that it was important that in the event of concerns being raised by an outside source, the family should be treated as innocent until proven guilty.

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| <i>We have sought to clarify what would constitute “exceptional circumstances”.</i> |
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It was thought by some respondents that it could not be assumed that efficient education was taking place, and that the parent should be required to provide evidence at least on an annual basis.

“The guidance offers no means to ensure that children being educated at home are receiving an efficient education ...as required in the 1980 Act. School education provision is subjected to periodic inspection to confirm that it complies with required standards and scope. We feel that there should be some similar monitoring of the education provided to children at home to ensure that the education they receive, whilst different from a school education, still complies with the term “efficient”.”

Other respondents believed that, because the definitions of “efficient education” vary enormously, this would be difficult. The majority of respondents thought that paragraph 5.5 was useful in suggesting the characteristics of efficient education in the home education context, although one home educating organisation thought that it read like a tick list.

“The list is not exhaustive and should not be considered applicable to all children.”

Section 6-Children with Special Educational Needs.

A number of respondents did not comment on this section because of the forthcoming Additional Support for Learning Bill.

Some of those who commented did so only to note that the Section will need to be updated following the ASL Bill and to ask for further consultation on the section in due course. Some found the section clear and helpful. Others found it to be vague. Some education authorities were concerned about the resource implications.

Home educators wished to emphasise the view that the parents are still the best judges of their child’s needs, even where the child has SEN/ASN and that any intervention or psychological assessment should only be carried out if the parents are in agreement.

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| <i>This section has been updated as much as possible.</i> |
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Appendix 1-Qualifications Options and Appendix 2-Contacts

Again very few respondents commented on the Appendices. Those who did either welcomed them as useful and helpful or asked for amendments or updates to be made to the information contained in them.

Conclusion

The comments received have been used to further refine and update the guidance. Good practice examples have been included within the final version of the guidance. There are clearly some issues touched on by the guidance on which there will never be full agreement amongst all the parties concerned. The Scottish Executive therefore proposes to issue the guidance with a review date of two years hence. In the meantime we would welcome any comments on the usefulness of the guidance, although no alterations will be made to the guidance until that date.

Comments should be submitted to home.education@scotland.gsi.gov.uk.