

Response to Home Education – Call for Evidence and revised DfE guidance

8. How effective are the current voluntary registration schemes run by some local authorities? What would be the advantages and disadvantages of mandatory registration of children educated at home, with duties on both local authorities and parents in this regard?

It is well established in law, both domestically and internationally, and as a matter of common sense, that parents are the ones who love their children the most and have primary responsibility for them. This is reflected in the text of numerous international instruments including Article 18(1-2) of the United Nations Covenant on Civil and Political Rights, which unambiguously states that parents have the primary responsibility in the upbringing of their children; and the role of the state is to assist them in this task, not to usurp that right. While on its face, registration creates the façade of ensuring quality, the reality is that as bureaucratic encumbrances increase, freedom of guiding your child's education decrease. This freedom is essential for guaranteeing societal pluralism, a staple of any health democracy.

9. What information is needed for registration purposes, and what information is actually gathered by local authorities? Would it help the efficacy of these schemes, and the sharing of information between authorities, if there were a nationally agreed dataset or if data could be shared by national agencies, such as DWP or the NHS?

The storing by a public authority of information relating to an individual's private life amounts to an interference within the meaning of Article 8 of the European Convention on Human Rights (*see e.g. ECHR, Case of Rotaru v. Romania* [GC], application no. 28341/95, judgment of 4 May 2000, §§ 43-44). By seeking to increase personal data collection and therefore enhance state scrutiny of family data, the instant proposal runs in direct contradiction to the current *zeitgeist* of the GDPR, the purpose of which is to strengthen citizen privacy rather than undermine it. Given the success of the current home education structure, such enhanced security is not only unwelcome, it is also unnecessary and does not serve a legitimate enough purpose for it to justify the consequent data incursion.

10. Does experience of flexi-schooling and similar arrangements suggest that it would be better if the scope of registration schemes included any children who do not attend a state-funded or registered independent school full-time? If so, do you think that local authorities should be able to confirm with both state-funded and independent schools whether a named child is attending that school full-time?

As with the previous two responses, the proposed regulations create serious concerns about family privacy, parental rights, and creating unnecessary encumbrances on home schooling

families which would have the effect of diminishing the rights of those families who choose to home educate.

11. Would the sanction of issuing a school attendance order for parental non-compliance with registration be effective, or is there another sanction which would be more useful?

We oppose the presupposition that registration is either a necessary or effective tool in relation to home education. We also draw your attention to the growing trend at the European Court of Human Rights to accept cases where governments have sanctioned families to ensure compliance with education laws (*see e.g. ECHR, Dirk Wunderlich and Petra Wunderlich against Germany*, application no. 18925/15, communicated on 30 August 2016 (dealing with the sanctioning of home educating parents)).

12. What steps might help reduce the incidence of schools reportedly pressuring parents to remove children to educate them at home?

We object to the phrasing of this question which seems to suggest, whether intentionally or not, that home education is somehow a lesser mode of education than state schooling. The question also puts the proverbial cart before the horse by placing state education ahead of parental rights in relation to who should be guiding educational choices.

13. Is there an argument for some provision which allows a child to return to the same school within a specified interval if suitable home education does not prove possible?

No

14. How effective is local authority monitoring of provision made for children educated at home? Which current approaches by local authorities represent best practice?

Any best practice should ensure liberality in parental choice over regulatory encumbrance. Home education has proven to be an academically efficacious alternative to state schooling. Lawrence M Rudner, in *Scholastic Achievement and Demographic Characteristics of Home School Students 1998*, has for example evidenced that home schooling children exceed state schooled children by several years in key academic markers, this being true both in the UK and US. Alan Thomas' research has found similar outcomes, suggesting that home educated children read sooner and more voraciously, exhibit more open mindedness, and are generally more confident. (Roland Meighan, 'Research Report: Home-based education learning methods' in *Education Now: 25 Years of Home-Based Education*, 2001. See also, *Educating Children at Home*, Alan Thomas, Cassell 1998). As the old proverb goes, if it isn't broken, don't fix it. Creating mandatory registration schemes would open the door to full scale regulation. This would be toll the death knell for parental choice.

15. If monitoring of suitability is not always effective, what changes should be made in the powers and duties of local authorities in this regard, and how could they best ensure that monitoring of suitability is proportionate?

Christian Concern opposes any changes in the law which would increase scrutiny of home schooling families on subjective and non-academic criteria which would include any area of sensitive moral discourse. A valid reason to home educate is to ensure the law respect of the

right of parents to educate their children in accordance with their own religious and philosophical convictions. This is a legal requirement pursuant to the Human Rights Act 1998. Increasingly, the state has embarked on a zealous enterprise of what many families deem to be misplaced proselytism in the areas of sexuality and sexual identity (*cf. Kjeldsen, Busk Madsen and Pedersen v Denmark*, Judgment, Merits, App No 5095/71 (A/23), [1976] ECHR 6, IHRL 15 (ECHR 1976), 7th December 1976, European Court of Human Rights [ECtHR], § 53). Increased regulation of home education bares the risk of increased intervention into what is being taught to children, thus doing violence to the *raison d'être* of many home schooling families.

16. Should there be specific duties on parents to comply with local authorities carrying out monitoring if such LA powers and duties were created, and what sanctions should attach to non-compliance?

We direct you to our previous response to question 15.

17. Is it necessary to see the child and/or the education setting (whether that is the home or some other place), in order to assess fully the suitability of education, and if so, what level of interaction or observation is required to make this useful in assessing suitability?

Such intervention is not necessary. Existing supervisory efforts have come under great scrutiny in recent months. Tes, a leading education organisation, has for example cited a study showing that at least 10 percent of Ofsted inspections are unreliable (<https://www.tes.com/news/exclusive-leading-critic-ofsteds-reliability-admits-watchdog-now-doing-well>). Publications like *the Guardian* run frequent stories questioning the very existence of Ofsted in its current format (*see e.g. "Should we scrap Ofsted: The Pros, Cons and Alternatives,"* <https://www.theguardian.com/teacher-network/2016/mar/06/scrap-ofsted-pros-cons-alternatives>; *"An inspector calls: is it a time for a rethink on Ofsted Visits,"* <https://www.theguardian.com/teacher-network/2017/apr/11/inspector-calls-rethink-ofsted-inspections>). It therefore strains credulity to suggest that the mandate of educational supervision should be expanded rather than reformed.

18. What can be done to better ensure that the child's own views on being educated at home, and on the suitability of the education provided, are known to the local authority?

Presumably, given that Parliament has suggested it would seek to implement the Convention of the Rights of the Child into UK law and its policies, this question is underpinned by Article 12 of the Convention which states that "*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.*" It is important to therefore note that Article 12 is limited by other Articles of the same Convention (Article 5 and 12 on evolving capacities, and Article 29(2) which states that government action on education shall not undermine parental choice in how they wish to educate their child outside of a state school setting). Neither should the state ever supplant the concept of the best interests of the child with a subjective standard making the DfE the ultimate arbiter of what those interests are. Such a position does not balance parental rights against a child's rights, but is an act overtly aimed at undermining parental rights.

19. What are the advantages and disadvantages of using settings which are not registered independent or state schools, to supplement home education? How can authorities reliably obtain information on the education provided to individual children whose education 'otherwise than at school' includes attendance at such settings as well as, or instead of, education at home?

The freedom to educate your own child according to your own religious or philosophical convictions, and to do so in settings other than a state established school, is a basic principle of education law guaranteed by Article 5(1)(b) of the Convention against Discrimination in Education; Article 13 of the International Covenant on Economic, Cultural and Social Rights; Article 26(3) of the Universal Declaration of Human Rights; Articles 14 and 18 of United Nations Convention on the Rights of the Child; Protocol 1, Article 2 of the European Convention on Human Rights; and Article 18(4) of the International Covenant on Civil and Political Rights. The hermeneutic with which supplemental programmes should be viewed is not one of suspicion, but rather a viewpoint aimed at fulfilling both the spirit and letter of the aforementioned legal instruments.

20. What are the advantages and disadvantages of using private tutors to supplement home education? How can authorities best obtain information on the education provided to individual children whose education at home includes private tuition, or whom attend tuition away from home?

We direct you to our previous response to question 19.

21. Are there other matters which stakeholders would wish to see taken into account in this area? If so please insert comments below.

No

As stated at length above, the chief concern must always be ensuring that due respect be given to parental rights and that no action be taken which would diminish the prior right of parents to choose and guide the education of their child.

22. What might be done to improve access to public examinations for children educated at home?

Every reasonable effort should be made in relation to giving access, advice, and educational materials to home educating families as part of the role of government to support the education of children and the right of families to guide the education of their own children. The typical home school family has made the decision to invest their time and energy into the education of their own child. It is an act of sacrifice, and one of parental love. Rather than being looked upon with suspicion, we should look upon such families in a positive light and remove any encumbrances that may get in the way of their educating at home.

23. What good practice is there currently in local authority arrangements for supporting home-educating families? Should there be a duty on local authorities to provide advice and support, and if so how should such a duty be framed?

We direct you to our previous response to question 22 with the additional note that a duty of care towards home schooling families should fall upon the local authority. Home schooling families should not be placed at any disadvantage in relation to their counterparts in traditional educational structures. Affirmative action, in some circumstances, may be necessary to bring about an equality of arms for home educating families.

24. Should there be a financial consequence for schools if a parent withdraws a child from the school roll to educate at home?

No.

Schools should not suffer financial consequences where a parent wishes to home educate. Such a scenario artificially creates an animus towards home educating families and may have the effect of schools placing undue pressure on families not to home educate.

25. Should there be any changes to the provision in Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006 requiring local authority consent to the removal of a child's name from the roll of a maintained special school if placed there under arrangements made by the local authority?

Local authority consent to remove a child's name from the roll of a maintained special school should not be a legal requirement. While empirical evidence suggests that incidences of home education are on the increase, that increase is not of such a level which would materially change the attendance rates at maintained special schools. By alleviating such bureaucratic barriers, both schools and parents are better placed to focus exclusively on education rather than losing focus and energy on administrative red tape. As with the previous response, any encumbrance on schools in relation to the withdrawal of a child might have the unintended consequence of schools pressuring students not to be withdrawn.

26. Are there any other comments you wish to make relating to the effectiveness of current arrangements for elective home education and potential changes?

The existing home education model has proven to be effective and attractive. The increase in home educating families should be seen in a positive light as evidence of the success and efficacy of home schooling as an educational choice. Alternatively, the rise in the number of home educating families may also speak to the failure of educational officials to meet the needs of parents, as well as the increasingly prevalent perception that education is becoming overly ideological. The solution to this perception is not transferring maligned or controversial elements of current education policy to home schoolers; it is to address the perception within state schools and cure the issue at that level.

27. What data are currently available on the numbers of children being educated at home in your local authority area?

N/A

28. Do you have any comments on any of the contents of the call for evidence document in relation to equality issues?

Since the Equality Act 2010 was rolled out, the response to it has been contentious and often-times confused. The Act is often vague as to legal requirements leading many schools to have to guess as to their obligations. This is particularly detrimental to faith schools who often are left to feel, and sometimes so by Ofsted officials, that they must compromise their ethos in order to be compliant with the law. The DfE is also promoting definitions among the protected characteristics which are not based in existing law. Schools are being encouraged by some local authorities, for example, to treat gender confusion and perceived gender identity as being synonymous with gender reassignment. They are not synonymous and nor did Parliament intend them to be. Given the immense impact of such policies on students, parents, and staff, such decisions should be made by Parliament. The increasingly polemical nature of the tolerance agenda has been among the reasons for the increase in home education. Given this fact, a large margin of appreciation should be afforded home educators as to which values they wish to pass onto their own children.

[29. Comments on Section 1: What is elective home education?](#)

Section 1 and 2 provided a good and objective introduction. Christian Concern fully agrees with the statement that local authorities should not be interested in the reasons for home educating, which as the section then highlights, are diverse and valid.

[30. Comments on Section 2: Reasons for elective home education - why do parents choose to provide it?](#)

We direct you to our previous response for question 29. It should be added that the local authority should remain neutral as to any circumstance or ground relating to why a family home educates, and not allow their subjective perception as to what may be a negative reason to cloud their judgment. Precisely stated, officials should not allow their perception, particularly negative ones, of why a family chooses to home educate to effect any evaluation of the quality of education received. Quality should also not be reflected by artificial standards but on objective criteria which focuses on long term education rather than short term markers. For example, if literacy is being emphasised at an early stage of education over maths, this does not necessarily mean that the quality of education is poor because maths scores are less than other children at that age. It may simply mean that maths skills may be emphasised at a later time depending on the pedagogical style of that particular home schooling family.

[31. Comments on Section 3: The starting point for local authorities](#)

At 3.5, the word “preferably” should be omitted, to better ensure that local authorities do consult local families as to their written policies on elective home education.

Also, every effort should be made to guarantee that Ofsted inspections of local authorities do not unduly prejudice home educators or lead to unnecessary incursions into how families are choosing to home educate. Ofsted continues to exhibit an increased fervour, particularly on ideological matters, which could have a detrimental knock-off effect on home education rights. There is a reality that there is a segment of home schooling families who have made their decision to remove their children from state schools precisely because of Ofsted’s increased ideological motivations. Their desires to raise their children according to their own faith and values should not be compromised by that very same authority.

32. Comments on Section 4: How do local authorities know that a child is being educated at home?

We are concerned that this section will be used to later justify mandatory registration of home educators. While oversight of education is a legitimate aim, it can be done in less invasive manner which still maintains the proportionality between suitable oversight and maintaining parental freedom in education. The onus should be on the local authority to comply with s.436A without compromising educational choice. It is not registration, *per se*, that presents the issue. The issue is that registration would create a situation in which state oversight could be greatly expanded with the consequent erosion of education freedom. This, no doubt, would be an inevitable consequence of forcing registration.

33. Comments on Section 5: Local authorities' responsibilities for children who are, or appear to be, educated at home

We take issue with paragraph 5.3 in stating that it is for the local authority to decide what is a proportionate and necessary means of ensuring compliance with s.436A. The wording as currently drafted could lend itself to broad interpretation where local authorities feel that they have unfettered discretion in deciding what the terms necessary and proportionate mean. By way of comparative jurisprudence, the terms 'necessary' and 'proportionate' make up the primary elements of the third limb of analysis where Convention rights are interfered with under the Human Rights Act 1998. Their meaning in this context is that any action should be narrowly tailored to cause the least disruption possible to rights, here parental rights, while still serving a compelling state interest.

34. Comments on Section 6: What should local authorities do when it is not clear that home education is suitable?

Several of the draft provisions create cause for concern and may eventually become an existential threat to the freedom of home education families to guide the education of their children. All effort should be made to make quality control as unobtrusive and limited as possible. Strict definitions and bright line rules should be established to determine what a suitable education entails with suitability being defined broadly to allow for different home education models which may emphasise certain subject matters at an earlier stage, while supplementing other subject matters at a later period. In this context, different does not mean unsuitable.

Also, we recognise that case law suggests that while parents are under no duty to respond to a s.436A inquiry that not doing so will be held against them. This creates a *de facto* situation where a duty has been created, not by parliament, but by the courts, and that any right to refuse the inquiry is made completely illusory. Furthermore, we again reiterate at paragraph 6.9 that the words "if it appears" should be read with the strictest of scrutiny and be applied in a clear, conservative, and transparent manner. The words should not be used as a loophole to investigate home educating families with impunity.

35. Comments on Section 7: Safeguarding: the interface with home education

It is imperative to create a very strict and clear definition of what a 'suitable education' entails. The quality of that definition must provide for ample foressability and precision, so

that parents know exactly where they stand in relation to this issue and how they may govern their actions appropriately. Accessibility is also relevant. If parents are not aware of what a 'suitable education' means, they will not be able to guard themselves and their families appropriately. Suggesting that failing to provide a 'suitable education', where that definition is left to the subjective determination of the local authority, amounts to 'harm', which is defined to include physical and emotional violence, may constitute a mortal threat to the right to privacy and family life as defined by Article 8 of the Convention. The subjectivity of paragraph 7.6ff is startling.

The United Kingdom's Children and Family Court Advisory and Support Service [CAFCASS] has reported a nearly 150% increase in the number of new child care cases since 2005-2006. To put that into perspective, the number of cases in just over a decade's time increased from 6, 613 new cases per year, to 15, 485 new cases. The figures from the first 5 months of the current reporting year have shown an increase of 23% since the corresponding period last year. The situation has led to experts, such as Dave Hill, President of the Association of Director's Children's Services [ADCS], calling the situation a national disgrace; and Sir James Munby, President of the Family Division, labelling it as a public crisis. All effort should be made to ensure that home educating families do not unwittingly become casualties of this crisis.

36. Comments on Section 8: Home-educated children with special educational needs (SEN)

Children with special needs, and their families, should be treated with equal dignity and respect as other families. Increased scrutiny should not take place just because a child suffers a disability or has a special need. Local authorities should assist home educating families with providing any reasonable adjustment their special needs child may have in relation to their education while not otherwise interfering with the right to family life and privacy.

37. Comments on Section 9: What do the s.7 requirements mean?

With regard to paragraph 9.4(d) it should be noted that the legislative history of Protocol 1, Article 2 of the Convention makes clear that Contracting Parties to the Convention viewed this particular Article as creating only a minimal positive obligation on states to ensure that education is available to all young people. The drafters of the Article were reticent to create an Article which formed onerous new negative and positive obligations on state parties. The European Court has always reviewed education cases in this spirit. As such, we contest the draft guidance's interpretation of the Convention on this point.

Second we note that any subjectivity in determining what amounts to being taught conflicting morals with 'fundamental British values' should be eliminated. In today's highly charged and divisive political and ideological environment, it is not unlikely that some local officials could find that being taught traditional Christian values on marriage, family, and sexuality amount to serious contradictions of British values. At Christian Concern, we have already seen similar incidences where differences of moral views have lead some being reported to Prevent as extremists. <http://www.christianconcern.com/our-issues/employment/christian-teacher-dismissed-and-referred-to-counter-terrorism-watchdog-after-s>. Freedom of Christian families to provide a Bible based values education to their children should be respected.

[38. Comments on Section 10: Further information](#)

While safeguarding concerns may arise in certain situations where unregistered settings are involved, this should not create a cloud of suspicion over all unregistered settings. A great number of excellent Christian programmes exist, for example, under this heading. These education providers have made positive contributions to education and society at large. They have also played a historical role within the United Kingdom and make up part of the educational fabric which this nation was built upon. Under no circumstances should such programmes be categorised together with other faith programmes which may in fact be providing extremist teachings. Political correctness or the desire to appear even-handed should never be considerations when dealing with Christian programmes. Each and every such programme should be judged objectively and separate from any other considerations or value judgements.

[39. Comments on Section 1: What is elective home education \(EHE\)?](#)

This section provides a clear definition of elective home education. It could be supplemented with further information about what rights EHE families enjoy under the law.

[40. Comments on Section 2: What is the legal position of parents who wish to home educate children?](#)

With regard to paragraph 2.10(b), we refer you to our response to question 37.

With regard to paragraph 2.10(c), we refer you to our response to question 30.

[41. Comments on Section 3: So what do I need to think about before deciding to educate my child at home?](#)

We take exception to paragraph 3.3 which states that some reasons for deciding to home educate may be more valid than others. The DfE should operate under a strict duty of neutrality regarding value judgments made by parents in relation to their children. It should not assess the validity of a parent's choice to home school.

[42. Comments on Section 4: If I choose to educate my child at home, what must I do before I start?](#)

We have no comments as to section 4. It provides a good and helpful summary.

[43. Comments on Section 5: What are the responsibilities of your local authority?](#)

We refer you to our responses to question 31 and 35.

[44. Comments on Section 6: Further information](#)

We refer you to response 38 above regarding the subheading "attending other settings" on page 17 of the Draft Guidance.

Regarding the subheading “children in faith communities” on page 19 of the Draft Guidance, we note that under no circumstances should faith communities be viewed with enhanced suspicion or scrutiny. To the contrary, under their public sector equality duty (Sections 149-157, Equality Act 2010), local authorities should be promoting and embracing the diversity created by faith communities as their ethos’s are part of the protected characteristic of religion or belief (Section 10, Equality Act 2010). Section 13 of the Human Rights Act 1998 may also be engaged in any decision effecting a faith community and its ability to offer education free from undue government interference.

45. Do you think that anything in the revised guidance documents could have a disproportionate impact, positive or negative, on those with 'relevant protected characteristics' (including disability, gender, race and religion or belief) - and if so, how?

Several of our responses have expressed concern about how certain elements of the Draft Guidance could create enhanced scrutiny of Christian home educating families or Christian programmes in unregistered settings. We again reiterate, in particular, that the question of British values should never be used as a sword against Christian families who wish to raise their children according to their own biblical beliefs. Objective markers should be developed to determine where the bounds of ‘suitability’ are breached; for example, inciting physical violence against someone because of a protected characteristic would be a breach; whereas Christian teaching on sexuality, gender and marriage should not be queried. We live during a time of often aggressive disagreement among those who hold different moral worldviews. In relation to sensitive values questions, decisions about what is and what is not suitable to teach one’s child should never be left to the sole discretion of a local authority actor. Clarity and precision are required in making any such assessments which guarantee that freedom of religion or belief are fully protected.

Christian Concern campaigns in law, media, and politics for a Christian vision of society which protects life, promotes family, and preserves liberty.

We equip the Church to speak of Jesus Christ as the hope for our nation and aim to see our culture transformed at every level by the power of the gospel.

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