

Elective Home Education

Legal Guidelines

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Act numbers refer to The Education Act 1996 unless otherwise stated.

Education is compulsory - school attendance is not

The freedom to educate children at home forms an intrinsic and essential element of educational provision in our society, a right which has been protected by a succession of Education Acts. **The law is clear that while education is compulsory, school attendance is not.**

Education Law

The fundamental piece of legislation regarding education in England and Wales is the **Education Act 1996** (a consolidating act which incorporates the 1944 Education Act and later legislation).

The **only** relevant sections are: (emphasis added)

Parental Duties:

Section 7

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable ;

- a) to his age, ability, and aptitude, and
- b) to any special educational needs he may have,

either by regular attendance at school **or otherwise.**"

LEA Duties:

The LEA's duties and powers in relation to home-educated children are contained in the Education Acts, 1944 to 1996. These are fully set out in sections 437 to 443 of the 1996 Act and (except in relation to special educational needs) are limited to the provisions of those sections.

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

Parental Responsibilities

Under section 576 of the Education Act 1996, a parent is defined in relation to a child or young person as also including any individual:

- (a) who is not a parent of his but who has parental responsibility for him, or
- (b) who has care of him.

As parents are responsible for ensuring that their children are properly educated, **it is their decision** whether to use schools or provide education at home.

It is important to note that the duty to secure education is stated entirely in section 7 and nowhere else.

Provided the child is not a registered pupil at a school, the parent is bound by no other constraints. In particular, **there is no obligation**

- **to seek permission to educate 'otherwise';**
- **to take the initiative in informing the LEA;**
- **to have regular contact with the LEA;**
- **to have premises equipped to any particular standard;**
- **to have any specific qualifications;**
- **to cover the same syllabus as any school;**
- **to adopt the National Curriculum;**
- **to make detailed plans in advance;**
- **to observe school hours, days or terms;**
- **to have a fixed timetable;**
- **to give formal lessons;**
- **to reproduce school type peer group socialisation;**
- **to match school, age-specific standards.**

De-registration

The grounds on which a pupil's name must be deleted from the admission register are listed in Education (Pupil Registration) Regulations 9, 1995 [SI 1995/2089]. Under regulation 9(1)(c), a 'school-age' pupil's name is to be deleted from the admission register if:

he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school.

If the parent writes to the proprietor explaining that the child is being educated at home, the school is obliged to take the child's name off the register, and the duty to secure regular attendance thus comes to an end. Since 1995 this has been an absolute legal requirement: no discretion is involved. (Under regulation 13(3) the proprietor of the school must also report the deletion of the pupil's name from the admission register to the LEA within ten school days.) In this way the legal position of a parent embarking on home-based education is the same regardless of whether or not the child has been withdrawn from a school for this purpose. i.e., the LEA is entitled to make informal enquiries of the parent(s).

The only circumstances under which **parents** are under an obligation to inform the LEA of the intention to home educate a child concern pupils registered at a special school where parents must seek the consent of the LEA (Regulation 9(2) Education (Pupil Registration) Regulations, 1995 [SI 1995/2089]). This extra requirement is intended to allow LEAs to ensure that a child's special educational needs will continue to be provided for when the child is withdrawn from school, and not to discriminate against the choice to home educate a child with SEN. Parents should be given reasonable opportunity to show that a 'suitable' education, taking account of the child's special educational needs, can be provided at home, and should be given sufficient time and information to rectify any perceived shortcomings in their provision. If an LEA refuses its consent, a parent may appeal to the Secretary of State.

LEA Duties

The wording of the Education Act 1996 requires the LEA to act **only** if something comes to its attention which gives it reason to suppose a breach of a parent's section 7 duty. It does not need to investigate any instances of home education which come to its attention unaccompanied by any grounds for suspicion that an adequate education is not taking place.

However, case law (Phillips v Brown, Divisional Court [20 June 1980, unreported] Judicial review by Lord Justice Donaldson, as he then was) has established that an LEA may make **informal** enquiries of parents.

Lord Donaldson said:

"Of course such a request is not the same as a notice under s 37 (1) of the Education Act 1944 (now s 437 (1) of the 1996 Education Act) and the parents will be under no duty to comply. However it would be sensible for them to do so. If parents give no information or adopt the course of merely stating that they are discharging their duty without giving any details of how they are doing so, the LEA will have to consider and decide whether it appears to it that the parents are in breach of s 36. (now s7 of the 1996 Education Act.)"

Determining Suitable Education

LEAs should bear in mind when considering the replies to such informal enquiries (and other more formal ones, should the matter go that far) that parents taken to court for failing to comply with a School Attendance Order only have to show the court that they are providing a suitable education on **a balance of probabilities**. That is the test that LEAs must also apply. Also a court will receive any evidence a parent produces, it will not have to be in any specified form and it will be sufficient so long as it shows that a suitable education is being given. Similarly an LEA has no power to require that information be given to it in a specified form or way.

The DfEE acknowledges this in their information leaflet entitled, ENGLAND AND WALES EDUCATING CHILDREN AT HOME:

3. LEAs, however, have no automatic right of access to the parent's home. Parents may refuse a meeting in the home, if they can offer an alternative way of demonstrating that they are providing a suitable education, **for example**, through showing examples of work and agreeing to a meeting at another venue.

Another example might be information provided in written form, sufficiently comprehensive to establish competence and intention, and beyond the mere assertion that education is taking place which Lord Donaldson determined was inadequate.

Many parents are quite concerned not to have their child's privacy invaded out of respect for the child's autonomy, and any hint of testing or examination by strangers with a different agenda can be experienced as undermining. Therefore for reasons of educational approach, some parents may not wish to provide information to their LEA through home visits.

It would be helpful if LEAs carry out their duty to accept information provided in any reasonable and adequate form, by not making a prior assumption of the normalcy of **any** particular form this might take, but on first approach to present the parents with the free choice the law supports.

In the case of R v Surrey Quarter Sessions Appeals Committee, ex parte Tweedie (1963), Lord Parker held that: '.....an education authority should not, as a matter of policy, insist on inspection in the home as the only method of satisfying themselves that the children were receiving full time education.'

There is no legal requirement for the LEA to make continual enquiries. Once in receipt of a reasonable account of the educational provision, their legal obligation is fulfilled and no further contact is necessary. However, some parents may appreciate continuous help, support and contact and under these circumstances further contact can be arranged. Some LEAs arrange 'drop-in' centres where families can maintain contact.

School Attendance Orders

Education Act 1996 s 437-443, (previously s 192-198 1993 Act)

This begins:

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

The formal steps provided for in these sections should not be needed unless something has gone seriously wrong. Nevertheless they are summarised here for reference:

1. If the LEA has evidence that the educational provision appears to be inadequate, the LEA must serve the parents with a notice giving them at least 15 days to satisfy them that they are educating properly.
2. If the parents fail to do this, the LEA then have to consider whether it is expedient for the child to go to school. If they think it is they must serve a 'school attendance order', but before doing so they must serve a notice stating which school they intend to name in the order, and giving the parents a chance to choose an alternative.
3. The LEA serve a school attendance order requiring the parents to register the child as a pupil at the school named in it.
4. The parents can ask the LEA to revoke the order because they are educating 'otherwise'.
5. The LEA can prosecute the parents for not complying with the order, but the action will fail if the parents can show the court that they are educating 'otherwise'.

The evidence a court requires to satisfy it that adequate education is taking place, is such as would convince **a reasonable person, on the balance of probabilities**. (Under section 447, whether they prosecute or not, the LEA must also consider applying for an education supervision order.)

Diverse approaches to home education

The principle of parental choice is paramount. Families are entitled to choose what they feel to be the most suitable educational approach.

One system cannot be expected to cater for the needs and interests of all individuals, (many fail to thrive or reach their full potential whilst receiving formal instruction in a school environment). A variety of alternatives in education is therefore important **and the law allows for this diversity.**

A clearer interpretation of some terminology used in the 1944 Education Act (replaced by the 1996 Act), was gained in the case of Harrison & Harrison v Stephenson (appeal to Worcester Crown Court 1981). The term '**suitable education**' was defined as one which enabled the children to achieve their full potential, and was such as to prepare the children for life in modern civilised society. The term '**efficient**' was defined as achieving that which it sets out to achieve.

Clearly this definition covers a great variety of educational approaches.

There is no one 'correct' educational system. All children learn in different ways and at varying rates, and chronological age has little bearing on the process. It would be wholly inappropriate for example to seek to impose reading and numeracy age scales on home educated children, not subject to the specific educational methods in state schools. Individual children come to literacy and numeracy over a huge age range, which has no subsequent bearing on their competence in these areas as adults. **It is vital that parents and children choose a type of education which is right for them, and it is important that any LEA officers understand and are supportive of many differing approaches or "ways of educating" which are all feasible and legally valid.**

Education Act 1996, Part V (incorporating Education Reform Act 1988)

This deals with the National Curriculum, stating in ss 351 to 353 (replacing ss1&2) that it only applies to children who are registered pupils of maintained (i.e. State or State-supported) schools.

Home educators may choose whether to base their studies around these guidelines fully, partially, or not at all.

Irregular or Non-attendance at School

Education Act 1996 s 444, (previously s 199 of 1993 Act derived from s 39 1944 Act)

This deals with the non-attendance, or irregular attendance at school, of registered pupils. If poor/non attendance is due to severe school anxieties, usually the Educational Welfare department becomes involved **and the family should be informed of all their duties, rights and available options including education at home.**

Many LEAs, when confronted with the problems of School Phobia/Anxieties, School Refusal/Truancing, encourage families to contact one of the home education support groups for help and advice. This provides a useful alternative course of action for officials, because if endeavours are made to pressure children with the above problems back into schools under duress, the whole family (as well as the child) suffers the ensuing stress and the truancing and nervous illnesses inevitably continue. **Education at home may prevent further distress and the possibility of the child returning to school at a later date remains an option.**

Flexi-time or Part-time schooling

There may be families who would prefer a flexi-time schooling approach.

Under s444(3)(a) of the 1996 Education Act

Any school age child who goes to school at all must attend regularly, but absence with leave does not count as irregular attendance. During such absences the child is officially at school, but is effectively being educated off site. (S)he is therefore covered for insurance and attracts full funding. Such arrangements are at the discretion of the school. (s 444 (9))

Home Educating Children with Special Educational Needs.

Children with special educational needs (SEN), are defined in section 312 (1) of the 1996 Education Act as having:

a learning difficulty which calls for special educational provision to be made for him.

A learning difficulty is further defined with regard to children over 5 in section 312 (2):

(a) he has a significantly greater difficulty in learning than the majority of children of his age,

(b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority...

The right to home educate children with SEN is upheld by section 7 (b) :

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable ;

- a) to his age, ability, and aptitude, and
- b) **to any special educational needs he may have,**

either by regular attendance at school **or otherwise.**"

No particular qualifications or special needs training are required of parents fulfilling their Section 7 duty by educating otherwise.

Section 313 (2) of the Act gives LEAs a duty to have regard to the provision of The Code of Practice on the Identification and Assessment of Special Educational Needs, issued by the secretary of State.

Identification and assessment of children with SEN

Section 321 (3) (d) states that, in the area of SEN only, LEAs are responsible for a child :

if he is in their area and....

he is not a registered pupil at a school but is not under the age of two or over compulsory school age and has been brought to their attention as having (or probably having) SEN

Under section 321 (2) LEAs have a duty to formally **identify** a child for whom they are responsible **if:**

- a) he has special educational needs, **and**
- b) **it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.**

Although the LEA have a responsibility toward home educated children with special educational needs, in their area, they would only need to **formally** identify and assess those children if the authority themselves needed to

make provision for those special educational needs. Where the parents and the LEA are satisfied that the needs can be catered for by the parents in a home based education, embarking on the formal assessment and statementing procedure should not be necessary.

Statements of SEN

The statementing procedure is primarily designed to facilitate the LEA in deciding what special educational provision it may need to make beyond that being provided by a school or family.

Section 324 (1) states that:

If, in the light of an assessment under section 323 Ö it is necessary for the local educational authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs.

If an LEA carry out a statutory assessment of a child educated otherwise and conclude that the child's special educational needs cannot be met without extra funding by the LEA or that it would be beneficial for the LEA to monitor the child's progress, a statement must be made. The LEA must first serve the parent with a proposed statement (Schedule 27 (2) (a)). A parent may, within certain time restraints, appeal against any part of the proposed statement. The LEA may also decide that a statement will not be necessary. In such cases they must give notice in writing of the decision and of the parent's right to appeal (section 325 (1)).

The SEN Code of Practice section 4.18 states that the LEA should also consider issuing a note in lieu of a statement, against which a parent wanting a statement may also appeal.

The LEA has a duty to honour the rights of parents to make representations, to request reassessment and to appeal to the Special Educational Needs Tribunal as detailed in sections 326 and 328 and Schedule 27 of the 1996 Act, and to fully inform the parent of those rights.

Where issue of a statement is necessary and an LEA is to make provision for the child's special educational needs, section 319 of the Act allows for the provision to be made by the LEA **otherwise than in a school**.

Maintenance of a statement

When a statement is issued, for as long as it is in place, the LEA have a duty to maintain it and to review the statement and provision for the child's special educational needs, annually. The Code of Practice 1994 section 6:1 also allows for the LEA to review the statement at any other time.

At review, the statement of a child who is deregistered from school, for the purposes of education otherwise may need amendment, particularly:

- Where section 4 of the statement names a particular school or type of facility it will need to be altered to education otherwise than at school.
- It may be clear to the parent and the LEA that some of the special provision can now readily be provided by the parent.

At review, it may be possible to cease the statement of a child educated otherwise.

- The child may no longer need extra provision once out of the school environment
- It may be clear to the parent and the LEA that all of the special provision can readily be provided by the parent without LEA oversight.

Further Reading

A detailed account of the law and home education further qualifying the points made throughout this document, can be found in 'Home Education and the Law (1991) by Dr. David Deutsch & Kolya Wolf, which has been subject to careful checking by a solicitor and by Counsel's Opinion, to ensure that "all statements of law, regulations and proper legal and administrative practice that it contains are correct". (Preface to 2nd Edition). (3rd edition due for publication autumn 1999)

Deutsch & Wolf observe that :

"It was never the intention of Parliament to compel all children to attend school. Nor was it ever the intention to specify, or to empower LEAs to specify, the form and content of every child's education. Parents who wish to provide a 'proper education' for their children otherwise than at school cannot legally be prevented from doing so....., and parents do not need to obtain permission or approval from anyone..... (Pg.3)

"...There exist many contending educational philosophies, giving rise to many different styles of education which are reasonable even though they differ radically amongst themselves The issue is not whether the education is approved of or disapproved of by the LEA or by anyone else." (Pg.6)

"Both among experts and among laymen there is no unanimous agreement as to what constitutes a proper education..... (Pg.6)

This document is the work of a large number of home educators including, but not exclusively, members of Education Otherwise and Choice in Education. It was edited by Neil Taylor, and checked for legal accuracy by a team of home educating lawyers.

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