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Consultation Document

Registering and monitoring home-based education

Date of issue: **3 September 2012**

Action required: Responses by **23 November 2012**

Registering and monitoring home-based education

- Overview** To seek views on proposals for the introduction of a compulsory registration and monitoring system for those who elect to provide home-based education.
- How to respond** Responses should be e-mailed/posted to the address below, to arrive by 23 November 2012 at the latest.
- Further information and related documents** Large print, Braille and alternate language versions of this document are available on request.
The consultation documents can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations
- Contact details** For further information:
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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Ministerial foreword

Every child has a fundamental right to an education and it is the duty of the parent of a compulsory school age child to ensure that suitable education is being provided. Much of a child's early development takes place entirely in the home environment. As children grow and develop most parents choose to send their children to school; however some elect to continue their child's educational development within the home. The proposals in this consultation document are not designed to prevent children from being home educated. These proposals are aimed at ensuring that those children who are home educated receive a suitable education.

I believe the legislation surrounding elective home education has shortcomings because there is currently no legal requirement on the parent to tell a local authority (LA) that their child is receiving education at home. In the absence of this requirement, it is very difficult for LAs to carry out their duties to ensure that children are receiving a suitable education.

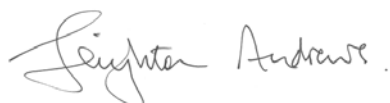
The proposals set out in this consultation document seek to introduce a structured approach as to how LAs and home educating parents engage with each other so as to ensure children educated at home receive a suitable education.

I propose putting in place a statutory duty on parents to register with the local LA that their child is receiving home education. This registration requirement will enable the identity of the home educated child to be established and allow engagement between the LA and the home educating family to ensure that the home education provided is suitable.

I believe that key to the success of these proposals will be to use existing powers to develop statutory guidance which sets out best practice for LAs when working with home educating families and encourages LAs and home educating parents to work together in the best educational interests of the learner. I recognise that more clarity is needed as to what a 'suitable education' might look like in the context of the variety of educational approaches used in home education. This will be covered in statutory guidance and will be consulted on separately.

The overall impact of these proposals will be to create a framework for engagement that helps build a new relationship between LAs and home educators, one where they can work collaboratively to provide the best possible support and education for learners.

I invite and welcome your views on the proposals put forward in this consultation. Your contribution will ensure that we get the right framework in place for Wales.



Leighton Andrews
Minister for Education and Skills

Background

1. Section 7 of the Education Act 1996¹ places a duty on the parent to ensure that their child receives a full-time, efficient education suitable to the child's age, aptitude, ability and any special educational needs (SEN) they may have. They can fulfil this duty by sending their child to school on a regular basis or otherwise (e.g. by educating them at home). For the purpose of this consultation document the term 'parent' includes any person with parental or caring responsibility.

2. Section 436A of the Education Act 1996² places a duty on LAs which consists of two parts. The first part requires a LA to identify (so far as it is possible to do so) all learners of compulsory school age in their area who are not on a school roll. The second part requires a LA to establish if such learners are receiving a suitable education. In the remainder of this document we describe this duty as 'the section 436A duty'.

3. The Welsh Government underpinned the section 436A duty with statutory guidance for LAs to help prevent children and young people from missing education³. The guidance issued in 2010 provides advice, makes recommendations as to how to meet and embed standards, and reflects practices that have already been demonstrated as being effective.

4. The term 'children missing education' covers a wide spectrum of learners and in some instances will include a child who is being home educated but who is receiving little or no education. Under the current system when a concern over the suitability of home education provision is raised, LAs can find it difficult to gather the evidence needed to verify the accuracy of the concern. This means they could be failing in their duty to ensure all the children in their area are receiving a suitable education. As a result of this, the Welsh Government proposes the introduction of a registration system for home educated children. The duty to register will be placed on the parent(s) of the child.

5. This consultation therefore focuses on statutory proposals to ensure that children who are home educated receive a suitable education.

¹ www.legislation.gov.uk/ukpga/1996/56/section/7

² As inserted by section 4 of the Education and Inspections Act 2006.

www.legislation.gov.uk/ukpga/2006/40/section/4

³ www.wales.gov.uk/topics/educationandskills/publications/guidance/missingeducation/?lang=en

The issues

Establishing who is being educated at home

6. Parents elect to educate their children at home for a diverse range of reasons. For some families the choice will be a natural one, often linked to their philosophies, beliefs or lifestyle. For other families home education is seen as a last resort triggered by a lack of a place at a preferred school, bullying, behavioural problems, school phobia or SEN.

7. When a parent elects to home educate they are not currently required to register this fact with their LA unless the child is registered at a special school⁴. As a result it is difficult to estimate the exact number of home educated children and young people in Wales. The 2011/12 statistical release of *Pupils Educated Other than at School*⁵ reported 986 compulsory school age children as being electively home educated. However, the nature of the provision is such that it is difficult to provide accurate figures.

8. LAs can use existing powers under the Children Act 2004⁶ to support collaborative working and information sharing as a means of identifying children in their area who should be receiving a suitable education. The Welsh Government also issued statutory guidance in 2010 which sets out best practice to help identify and prevent children going missing from education.

9. Despite this, LAs are finding it difficult to identify and track, in a timely and efficient way, all the children in their area who are being home educated. The main reason is that there is currently no legal requirement on parents to let the LA know that they are home educating. As a consequence, LAs are finding it difficult to fulfil their section 436A duty.

10. Although all LAs currently operate an informal register of home educated children, its content is limited. Currently, if a home educating parent decides not to engage with their LA and does not inform them of their decision to home educate it can make it difficult for a LA to keep track. This is particularly the case when the decision to home educate is taken before the child reaches compulsory school age, during transition between primary and secondary school, or when a home educating family moves to a new LA.

11. In order for LAs to fulfil their section 436A duty, the Welsh Government believes that LAs need to know in a timely way which children in their area are being home educated. The Government believes that putting a duty on parents of home educated children to register with the LA will assist the LAs. A locally managed, formal register of home educated children will enable each LA to make more accurate assessments of the number of home educated children in their area.

⁴ The Education (Pupil Registration) (Wales) Regulations 2010

www.legislation.gov.uk/wsi/2010/1954/regulation/8/made

⁵ www.wales.gov.uk/topics/statistics/headlines/schools2011/110914/?lang=en

⁶ www.legislation.gov.uk/ukpga/2004/31/section/25

Ensuring a suitable education is being provided

12. Home educated children are not required to follow a particular curriculum and this means a very wide range of teaching methods and styles are deployed, from autonomous child led learning models to more formally taught curriculum-based approaches.

13. Identifying instances where a child is not receiving a suitable education can be extremely complex as by necessity the education system operates under a very broad definition of the term 'suitability'. Case law has broadly described suitable education as one that 'primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so'.

14. Establishing the suitability of education in the context of home education can prove challenging as there is currently little guidance or training available to assist LAs in understanding the essential differences, variation and diversity in home education practice, as compared to schools.

15. In order to address this issue we intend to introduce new statutory guidance. The content of the guidance will be consulted on separately and the objective is that such guidance together with the proposal set out in this consultation will better enable LAs to discharge their section 436A duty.

16. It is anticipated that the following issues will be consulted upon in the separate consultation on suitability of education.

- Is the education suited to age, ability, aptitude, personality and interests of the learner?
- Does the education provide a balanced range of learning experiences, so that no one aspect of learning is emphasised to the exclusion of others?
- Does the education develop the personal, social and emotional skills of the learner and prepare them for the responsibilities of adulthood?
- Does the education ensure the development of basic skills including language, literacy and numeracy?

17. In addition to statutory guidance a key priority will be to develop training materials for use by LAs and those working with home educators to support a balanced, fair and consistent approach to the assessment of the suitability of home education provision. The training will seek to ensure that those undertaking it gain a full understanding that home education can be significantly different from school-based education and depending on the circumstances, it may be equally effective if not more effective in meeting the learning needs of the child.

The United Nations Convention on the Rights of the Child (UNCRC)

18. The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that protects the rights of children under the age of 18. By virtue of the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers are required to have due regard to the UNCRC when bringing forward new policy proposals and legislation.

19. In considering these proposals we have had due regard to the UNCRC. For example, the right of the child to education. There is also a requirement to give children a voice in decision-making processes affecting them. The Welsh Government will take into account the views and ideas expressed by children when making decisions that have a direct impact upon their lives. As such, an easy-read version of this document has been produced.

The proposals

20. These proposals are split into two parts. The first part (Stage 1) sets out the initial registration process and what is required. The second part (Stage 2) sets out the detail and requirements for annual monitoring.

Stage 1

Registration of home educated children

21. We propose to introduce a compulsory registration scheme for electively home educated children. The scheme would relate to compulsory school age children who are or who become home educated because their parents have elected to fulfil their duty under section 7 of the Education Act 1996 by home educating. Any parent wishing to home educate more than one of their children would be required to register each child. The registration requirement would last the duration of the period the child is home educated. If the child returns to mainstream education at any point and the parent subsequently elects to home educate then they would be required to re-register the child.

22. The purpose of the register would be to ensure that all children of compulsory school age who are being home educated are known to the LA in which the child lives. This in turn will allow the LA to fulfil its statutory duty to ensure that a suitable education is being provided to the child. If the child is not on the home education register and is not being educated under provisions made by the LA then they must attend a school. In such instances a School Attendance Order could be issued under section 437 of the Education Act 1996⁷.

23. LAs would be required to manage the registration process and to maintain the register. It is proposed that the information required to be on the register would be set out in regulations and would likely consist of similar information to that of a school's register such as the child's name, date of birth, address and contact details of the person with parental responsibility. Information on the main location where the education is provided as well as the type of educating being provided would also be a required part of the register's core details.

24. Home educators are not required to follow a particular curriculum, or adopt school-based approaches, nor will their children be required to take any national exams or assessments. This proposal does not change that position. However, a parent is required by law to ensure that their child receives a full-time efficient education suitable to the child's age, aptitude, ability and any SEN they may have. The information gathered as part of the registration process will allow LAs to assess that legal requirement is fulfilled.

25. The information on the register would be held for the purpose of enabling the LA to engage with the family in order to ensure the child is receiving a suitable education. A parent who elects to home educate would have a duty to notify the LA of any changes to their core registration details.

⁷ www.legislation.gov.uk/ukpga/1996/56/section/437

26. The LA would only be able to refuse a new application or revoke an existing registration in a very limited set of circumstances:

- if the parent fails to satisfy the LA that they are fulfilling their duty under section 7 of the Education Act 1996
- if the LA becomes aware of new or existing welfare or safeguarding issues that affect the suitability and effectiveness of the education provided
- if the parent fails to cooperate with monitoring and/or reasonable requests to monitor.

27. An application to register would trigger a requirement on both the parent and the LA to meet with each other, and with the child and home educator if different to the parent. The meeting should take place at the main location where the education is being provided within six weeks of receipt of the application. The main purpose of the meeting would be to assure the LA that a suitable learning environment and education is being or will be provided. We would expect the following areas to be discussed at this initial meeting:

- the education being provided (or proposed to be provided)
- the child's education experience to date (period of time home-educated, in school, etc.)
- any special talent/abilities that the child has
- any relevant formal assessments that have been carried out
- any additional learning needs the child has
- the parent's view of the progress that the child has made since being home educated
- the child's view of their educational experience to date (subject to age, ability and maturity).

28. We understand that assessing the suitability of home education for children with additional learning needs can be complex. In order to ensure the process is fair and balanced we propose that, where a home educated child has additional needs, the LA establishes the suitability of education provision in conjunction with a qualified and appropriate expert in that field of need. This will help establish what can be realistically expected of the child and whether the education provision is suitable. This proposal will be developed in conjunction with the ongoing consultation on proposals for the reform of the legislative framework for SEN⁸.

29. Following the initial meeting the LA must write to the parent within six weeks advising one of three outcomes:

- registration accepted

⁸ Consultation document: *Forward in partnership for children and young people with additional needs* (2012) www.wales.gov.uk/consultations/education/senframeworkconsultation/?lang=en

- registration pending – additional information is required as insufficient evidence was available to determine whether a suitable education is being provided. This may require a more comprehensive assessment to be made
- registration refused.

30. The letter will need to clearly set out the reason for the decision.

31. Where a parent disagrees with the LA's decision to refuse registration we propose that they have a right to appeal the decision.

Stage 2

Annual monitoring arrangements

32. Once the registration process is complete we propose that monitoring meetings should take place annually between the LA and the parent, home educator (where this is not the parent) and the child. A timescale for how often this meeting takes place in the main location of education provision will need to be set. If the location has changed since registration or the previous monitoring meeting then the meeting will need to take place in the new location. In the vast majority of cases it is likely that the main place of education is mutually agreed as the location for the annual monitoring visits. The consultation provides the opportunity to indicate the minimum timescale during which the annual monitoring meetings must take place at the main location of education.

We would expect the following areas to be discussed at this monitoring meeting:

- the provision made for the development of intellectual skills, social, emotional and physical development of the child
- the methodologies and materials used and time spent on education
- the progress achieved by the child as described by the parent/educator
- the progress achieved as demonstrated in work
- the child's view of their education and achievements (subject to age, ability and maturity)
- any additional support, advice or guidance the LA may be able to provide.

33. Within six weeks following the meeting the LA must write to the parent to advise one of three outcomes:

- they are content that suitable education is being provided
- additional information or monitoring will be required before a decision can be made
- registration has been revoked for reasons set out in paragraph 26.

34. As with the initial registration process the letter will need to clearly set out the reasons for the decision and where a parent disagrees with the decision to revoke registration we propose that they have a right to appeal the decision.